

AGENDA

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, APRIL 10, 2007
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley*

AGENDA APPROVAL

A. PROJECT REVIEW (FUTURE AGENDA ITEMS):

- A-1. MITIGATED NEGATIVE DECLARATION NO. 05-05/COASTAL DEVELOPMENT PERMIT NO. 05-07 (APPEAL – NEWLAND STREET WIDENING) – Jane James
- A-2. ENTITLEMENT PLAN AMENDMENT NO. 06-07 (LOWE'S RETAIL PAD SITE MODIFICATION) – Tess Nguyen
- A-3. TEMPORARY USE PERMIT NO. 07-01 (APPEAL – HUNTINGTON SURF & SPORT OUTDOOR SALES) – Andrew Gonzales

B. STUDY SESSION ITEMS - NONE

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) – Herb Fauland

D. PLANNING COMMISSION COMMITTEE REPORTS

E. PUBLIC COMMENTS – Regarding Project Review or Study Session portions of Meeting

Anyone wishing to speak on Project Review or Study Session items during PUBLIC COMMENTS may do so by filling out a Request To Speak form and giving it to the Secretary. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)
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F. PLANNING COMMISSION COMMENTS

6:30 P.M. – RECESS FOR DINNER

7:00 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL: *Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley*

AGENDA APPROVAL

A. ORAL COMMUNICATIONS

Anyone wishing to speak during ORAL COMMUNICATIONS must fill out and submit a form to speak. The Planning Commission can take no action on this date, unless the item is agendaized. Any one wishing to speak on items not on tonight's agenda, a closed public hearing item, or on non-public hearing items may do so during ORAL COMMUNICATIONS. Please note comments on closed public hearing items will not be part of the permanent entitlement record. Speakers on items scheduled for PUBLIC HEARING will be invited to speak during the public hearing. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)

B. PUBLIC HEARING ITEMS

Anyone wishing to speak during an open PUBLIC HEARING must fill out and submit a form to speak. The public may address the Planning Commission only during the open PUBLIC HEARING items or during ORAL COMMUNICATIONS. Please review the agenda to determine whether the PUBLIC HEARING item is open or closed. If the PUBLIC HEARING on an item is closed, you will not be permitted to speak during that portion of the agenda and may wish to address your concerns during the ORAL COMMUNICATIONS portion of the agenda. Speakers on items scheduled for PUBLIC HEARING will be invited to speak during the public hearing. (4 MINUTES PER PERSON, WITH A MAXIMUM TIME DONATION OF 8 MINUTES, FOR A TOTAL OF 12 MINUTES PER SPEAKER)

PROCEDURE: Commission Disclosure Statement(s), Staff Report Presentation, Commission Questions, Public Hearing, Discussion/Action.

- B-1. ZONING TEXT AMENDMENT NO. 06-08 (AMENDING CHAPTER 230.96 WIRELESS COMMUNICATION FACILITIES).** **Applicant:** City of Huntington Beach **Request:** To amend Chapter 230, Section 230.96 (Wireless Communication Facilities) of the Huntington Beach Zoning and Subdivision Ordinance to allow the City to exercise reasonable control over the time, place and manner by which telephone corporations use the public right-of-way to install and operate their facilities. The proposed ordinance requires that all future wireless communication facilities obtain approval of a Wireless Permit by the Director prior to installation regardless of location. **Location:** Citywide. **Project Planner:** Rosemary Medel

STAFF RECOMMENDATION: Motion to: "Approve Zoning Text Amendment No. 06-08 with findings for approval and forward Draft Ordinance, including the legislative draft to the City Council for adoption."

C. **CONSENT CALENDAR** - NONE

D. **NON-PUBLIC HEARING ITEMS** - NONE

E. **PLANNING ITEMS**

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING

E-2. CITY COUNCIL ITEMS FOR NEXT MEETING

E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING

F. **PLANNING COMMISSION ITEMS**

F-1. **PLANNING COMMISSION REQUEST ITEMS** – NONE

F-2. **PLANNING COMMISSION COMMENTS**

Commissioner Shier-Burnett -

Commissioner Speaker -

Vice Chairperson Livengood -

Chairperson Scandura -

Commissioner Horgan –

Commissioner Dwyer –

Commissioner Farley -

ADJOURNMENT:

Adjourn to the next regularly scheduled meeting of April 24, 2007.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission is final unless an appeal is filed to the City Clerk by you or by an interested party. Said appeal must be in writing and must set forth in detail the action and grounds by which the applicant or interested party deems himself aggrieved. Said appeal must be accompanied by a filing fee of One Thousand Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property or Two Thousand Three Hundred Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. The appeal shall be submitted to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action.

Copies of staff reports and/or written materials on each agenda item are on file in the Planning Department, for inspection by the public. A copy of the agenda packet is also available at the Central Library (7111 Talbert Avenue).

VIDEO TAPES OF MEETINGS AVAILABLE FOR PUBLIC CHECK OUT AT THE CENTRAL LIBRARY, AND FOR DUPLICATION SERVICES IN THE CITY CLERK'S OFFICE.

HUNTINGTON BEACH PLANNING COMMISSION

Public Hearing Procedures

This statement has been prepared to provide a better understanding of the procedures for public hearings before the Planning Commission.

Regular meetings of the Planning Commission are held on the second and fourth Tuesdays of each month beginning at 5:15 p.m. in Room B-8 for a study session and then at 7:00 PM in the Council Chambers. Adjourned meetings, special meetings, and Study Sessions may be scheduled at other times.

Planning Commission proceedings are governed by the Planning Commission By-Laws, Robert's Rules of Order and the Brown Act. The following is the typical sequence of events on public hearing items:

- A. The Chairperson shall announce the item and if the public hearing is open or closed.
- B. The Planning Commission shall disclose any discussions, conversations, etc., with applicants, applicant's representatives or property owners.
- C. The staff report is presented.
- D. Questions by the Planning Commission concerning the staff report may be answered at this time.
- E. The public hearing is opened by the Chairperson.
- F. The applicant or appellant is given an opportunity to address the Commission. Time is not limited but left to the Chairperson's discretion.
- G. Public Comments: Staff will call all speakers by name. Please proceed to the podium. Individuals favoring and opposing the proposal are given an opportunity to address the Commission (up to four (4) minutes), or may choose to donate their time to another speaker if the "Request to Speak" form is filled out and given to the Secretary. A speaker who addresses the Commission on behalf of individuals who donate time are allowed a maximum of 12 minutes. Individuals who donate time must be present when the item is being discussed. Please state your name before addressing the Commission.
- H. The Commission may ask questions of speakers addressing the Commission.
- I. The public hearing is closed.
- J. The Commission will deliberate the matter at this time.
- K. The Commission then acts on the matter by continuing, approving, conditionally approving, or denying the petition.


The Planning Commission receives a staff report packet on the Tuesday preceding the meeting, allowing time to review each case and make further investigations in the field prior to the scheduled meeting.

Staff reports are available in the Planning Department, the Central Library and on the City's website (www.surfcity-hb.org) anytime on Wednesday preceding the Tuesday Planning Commission meeting.



City of Huntington Beach Planning Department

STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, Director of Planning
BY: Jane James, Senior Planner 
DATE: April 10, 2007

SUBJECT: APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF MITIGATED NEGATIVE DECLARATION NO. 05-05 AND COASTAL DEVELOPMENT PERMIT NO. 05-07 (NEWLAND STREET IMPROVEMENTS BETWEEN PACIFIC COAST HIGHWAY AND HAMILTON AVENUE)

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

This item represents an appeal filed by Planning Commissioner Flossie Horgan of the Zoning Administrator's approval of Mitigated Negative Declaration No. 05-05 and Coastal Development Permit No. 05-07 (Attachment No. 4). Mitigated Negative Declaration No. 05-05 represents a request to analyze the potential environmental impacts associated with the implementation of the proposed project. Coastal Development Permit No. 05-07 represents a request by the City of Huntington Beach Public Works Department to widen and improve Newland Street between Pacific Coast Highway and Hamilton Avenue with the following:

- Widen the reinforced concrete bridge at Huntington Channel;
- Install storm drain improvements;
- Raise the profile of Newland Street to improve traffic visibility over the channel;
- Add a center striped median;
- Add a left turn lane from southbound Newland Street to eastbound Edison Way;
- Improve pedestrian access with new sidewalk on east side of Newland Street.

CURRENT LAND USE, HISTORY OF SITE, ZONING AND GENERAL PLAN DESIGNATIONS

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	Public Street	Public Street	Newland Street
West of Subject Property:	CV (Visitor Serving Commercial); RM-15 (Medium Density Residential-Max. 15 units/acre); OS-C (Open Space-Conservation)	CV-CZ-FP2 (Visitor Serving Commercial-Coastal Zone-Floodplain); IL-CZ-FP2 (Limited Industrial-Coastal Zone-Floodplain); CC-CZ-FP2 (Coastal Conservation-Coastal Zone-Floodplain)	Vacant with RV/ Mobile home park beyond; open space

LOCATION	GENERAL PLAN	ZONING	LAND USE
East of Subject Property:	P (Public); I-F2-d (Industrial-0.5 Floor Area Ratio-Design Overlay)	IG-CZ-FP2 (General Industrial-Coastal Zone-Floodplain); PS-CZ-FP2 (Public Semi-Public-Coastal Zone-Floodplain); IL-CZ-FP2 (Limited Industrial-Coastal Zone-Floodplain)	Wetlands and Wildlife Conservancy; AES; Humane Society; Industrial

The street right-of-way is currently 80 feet wide at the intersection of Newland Street and Pacific Coast Highway and reduces to 60 feet wide (40 feet wide east of centerline and 20 feet wide west of centerline) approximately 700 feet north of the intersection. This section of Newland Street is a popular path used by pedestrians and bicyclists to access the beach. Currently there is a single lane of travel in each direction with no sidewalk for a majority of the distance within the project area.

Additionally, a significant grade differential exists where Newland Street crosses the Huntington Channel. This grade differential creates a stopping sight distance deficiency at the intersection of Newland Street and Edison Way, as cars traveling south on Newland Street do not have sufficient time to react if another car has stopped to make a left hand turn onto Edison Way.

The proposed project widens Newland Street from the current 20 ft. – 40 ft. width to a 44 ft. – 48 ft. wide paved street section with bike lanes on both sides, a sidewalk on the east side, and a striped center median. The proposed widening will also address stopping sight distance deficiency by raising the road grade at the Huntington Channel and providing a left turn lane at the intersection of Newland and Edison Way. No additional travel lanes are proposed and Newland Street will remain a single lane of travel in each direction after completion of the project. As part of the widening, two existing streetlights will be relocated, and three additional streetlights, similar to those existing, will be installed along the east side of Newland Street.

The proposed widening improvements will impact the existing drainage along Newland St., requiring replacement of an unimproved drainage ditch to the east of the roadway. The drainage ditch has no natural outlet. In previous years, a City pump system located at the downstream end of the ditch automatically pumped the storm water from the ditch through a force main to a culvert located at the intersection of Newland Street and Pacific Coast Highway. A few years ago, however, when there was concern over high bacteria levels within the coastal waters, the city removed the automated pump system during the dry season to eliminate the ditch as a possible source of bacteria. During storm events, the City currently operates a temporary pump system to keep the ditch from flooding Newland Street.

The proposed project replaces the existing unimproved drainage ditch with a 39 inch reinforced concrete pipe storm drain and associated catch basins. The new storm drain system eliminates the need for a pump/force main to provide the drainage for Newland Street from the Huntington Channel to Pacific Coast Highway. In addition, the City will install a sewer line stub. The sewer line stub will accommodate a future relocation of the existing sewer line in Edison Way. The purpose of installing the sewer stub at this time is to minimize disruption to the street system at the time of future construction of the relocated sewer line.

A Reinforced Concrete Box (RCB) acts as a bridge where Newland Street crosses the Huntington Channel. In order to accommodate the road widening, the ends of this box must be lengthened within the channel, requiring the removal of the headwalls on the upstream and downstream ends. New extensions of the RCB will be formed and poured within the flood control channel.

The County recently completed a significant capacity expansion of the Huntington Channel by driving sheet piles along the banks and removing fill, converting the channel from an earthen walled trapezoidal channel to a rectangular steel walled channel. The County stopped their sheet piling approximately 20 feet short of the Newland Street Bridge on both the upstream and downstream sides, in order to accommodate the City's widening of the bridge. In order to provide interim protection of the existing bridge against erosion, the County placed rip-rap to prevent scouring around the headwall of the RCB. As part of this project, the City will remove the rip-rap material and clean out any sediment that accumulated within the existing RCB cells.

As part of the bridge widening within the Huntington Channel several existing utilities hung on the side of the existing RCB shall be relocated to pass underneath the expanded portion of the RCB. These utilities include a privately owned fuel line and a City owned 12 inch water main. In addition the City will be installing a 36 inch steel sleeve underneath the upstream section of the lengthened RCB. The sleeve would accommodate a future water transmission main. The purpose of installing the sleeve underneath the RCB at this time is to minimize disruption to the flood control channel for construction purposes.

Work within the channel will require the use of an excavator to remove the existing rip-rap material and to clear a portion of the channel floor to form the RCB extensions. Temporary dams or some other method of isolating the RCB from the channel flow will also be required to facilitate the construction of the lengthened sections. The isolation method used will be at the contractor's discretion, but could include the use of inflatable dams.

The AES Power Generation Facility recently dedicated property to the City along their frontage on Newland Street to accommodate the widening project. The widening of the RCB under the Huntington Channel will take place within the County owned flood control channel under an operating agreement between the City and the County. All other improvements will take place within the existing City owned right-of-way.

It is anticipated that construction will take approximately six to eight months to complete.

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

Mitigated Negative Declaration: July 5, 2006

Coastal Development Permit: July 5, 2006

MANDATORY PROCESSING DATE(S):

January 1, 2007 (180 days after application deemed complete)

60 days after action on Negative Declaration

The project was heard and approved by the Zoning Administrator on February 21, 2007. The subsequent appeal filed by Planning Commissioner Horgan is tentatively scheduled for the Planning Commission meeting of April 24, 2007.

CEQA ANALYSIS/REVIEW

The proposed project is covered by Mitigated Negative Declaration No. 05-05.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

The Departments of Building & Safety, Fire, and Public Works have reviewed the application and do not have any comments. The Zoning Administrator's Notice of Action is included as an attachment to this report (Attachment No. 5).

PUBLIC MEETINGS, COMMENTS AND CONCERNS

The City of Huntington Beach notified all responsible and interested agencies, interested groups, individuals, and property owners within a 500 ft. radius that Draft Mitigated Negative Declaration No. 05-05 had been prepared for the proposed project. The City also used several methods to solicit input during the review period for Draft Mitigated Negative Declaration No. 05-05. The following is a list of actions taken during the preparation, distribution, and review of the Draft Mitigated Negative Declaration No. 05-05:

1. A cover letter and copies of the Draft Mitigated Negative Declaration No. 05-05 were filed with the State Clearinghouse on July 21, 2006. The State Clearinghouse assigned Clearinghouse Number 2006071099 to the proposed project. A copy of the cover letter and the State Clearinghouse distribution list is available for review and inspection at the City of Huntington Beach, Planning Department, 2000 Main Street, Huntington Beach, California 92648.
2. An official 30 day public review period for Draft Mitigated Negative Declaration No. 05-05 was established by the State Clearinghouse. It began on July 21, 2006 and ended on August 21, 2006. Public comment letters were accepted by the City of Huntington Beach through October 20, 2006.
3. Notice of the Draft Mitigated Negative Declaration No. 05-05 was published in the Huntington Beach Independent on July 20, 2006. Upon request, copies of the document were distributed to agencies, groups, organizations, and individuals.

A total of five comment letters were received for Draft Mitigated Negative Declaration No. 05-05. Although not required by the California Environmental Quality Act (CEQA), a Response to Comments and Errata were prepared for the Zoning Administrator's review and consideration.

The project was approved by the Zoning Administrator on February 21, 2007. Notice of the Zoning Administrator hearing was published in the Huntington Beach Independent on February 8, 2007. The Zoning Administrator's approval was subsequently appealed by Planning Commissioner Flossie Horgan on March 7, 2007. Commissioner Horgan cited concerns with wetlands impacts and water quality issues in her appeal letter.

To date, the City has received one letter in support of the street widening project (Attachment No. 6). Other than the Mitigated Negative Declaration No. 05-05 comment letters cited above, there have been no other comments from the public regarding this request.

PLANNING ISSUES

This section of Newland Street is located within the Coastal Zone. The primary Planning issue to consider is maintaining public access to Coastal Resources both during construction and after implementation of the street improvement project. Additionally, Commissioner Horgan cites concerns with wetlands impacts and water quality issues in her appeal letter. The concerns identified in the appeal letter are currently under study by the Planning Department.

ATTACHMENTS:

1. Vicinity Map
2. Site Plan received and dated January 10, 2005
3. Project Narrative dated July 5, 2006
4. Planning Commissioner Horgan Appeal Letter received and dated March 7, 2007
5. Zoning Administrator's Notice of Action dated February 22, 2007
6. Letter from John Carter received and dated March 22, 2007



Newland Street Widening Project

Map produced by information contained in the City of
Huntington Beach Information Services Department
Geographic Information System. Information warranted for
City use only. Huntington Beach does not guarantee its
completeness or accuracy.
Map Produced on 7/5/2006



0 369 738
One inch equals 369 feet

STREET NAMES

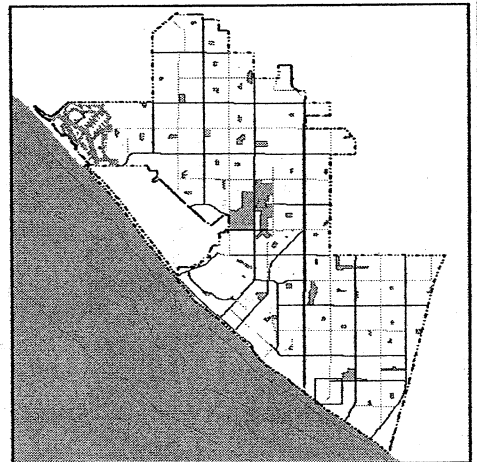
~ CITY BOUNDARY

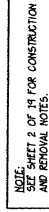
STREET CENTERLINES (CLASS)

~ Smartstreet
~ Major
~ Collector
~ Primary
~ Secondary
~ Residential
~ Travelway
~ Alley

ISOBATHS

~ HARBOR





	NEWLAND STREET IMPROVEMENT PLAN NEWLAND STREET SECTIONS FROM PACIFIC COAST HIGHWAY TO HAMILTON AVENUE CC-0095 HUNTINGTON BEACH, CA	SHEET NO. 3 OF 19

ATTACHMENT NO. 2.3



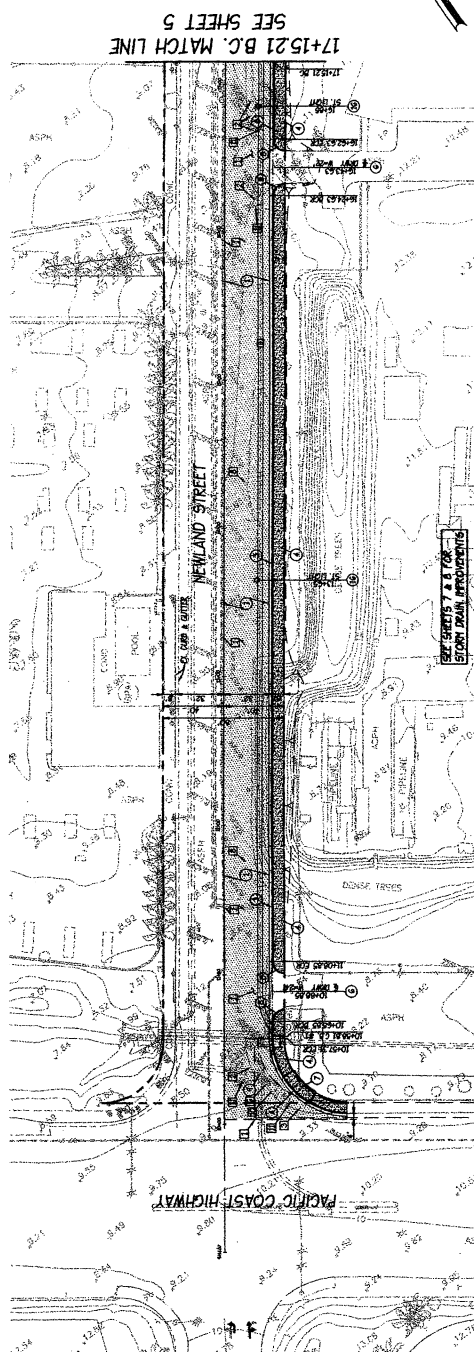
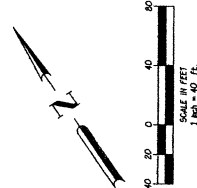
CONSTRUCTION NOTES:

1. CONSTRUCT 0.95' A.C. PAVEMENT OVER 0.05' A.B. (NEWLAND STREET)
2. CONSTRUCT 8" CONC. CURB AND GUTTER PER CITY STD. PLAN 202.
3. CONSTRUCT CONC. SIDEWALK PER CITY STD. PLAN 207.
4. CONSTRUCT COMPENSAL INTERLUDE APPROACH PER CITY STD. PLAN 211. W PER PLAN
5. CONSTRUCT RAMP PER CITY STD. PLAN 22.
6. ADJUST EXISTING MANHOLE TO GRADE.
7. INSTALL 5" LIGHT 250W WFLU HUNG ON 50 FT. POLE TO MATCH EXISTING.

REMOVAL & RELOCATION NOTES:


1	SAWCUT FULL DEPTH & REMOVE EXISTING A.C. PAVEMENT.
2	SAWCUT & REMOVE EXISTING CONC. CURB AND/OR CURB & GUTTER.
3	SAWCUT & REMOVE EXISTING SIDEWALK.
4	REMOVE EXISTING PAVEMENT CONTRACTOR TO COORDINATE WITH TRAFFIC ENGINEER.
5	RELOCATE EXISTING A.C. DEPTH
6	REMOVE EXISTING RAMP.
7	
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9	
10	RELOCATE EXISTING STREET LIGHT. CONTRACTOR TO COORDINATE WITH SEE.

CURVE DATA				
	DELTA	RADIUS	LENGTH	TANGENT
(A)	90°00'00"	50.00'	78.54'	50.00'
(B)	90°00'00"	5.00'	15.71'	5.00'

[illegible]

BENCHMARK: SEE SHEET NO. 1

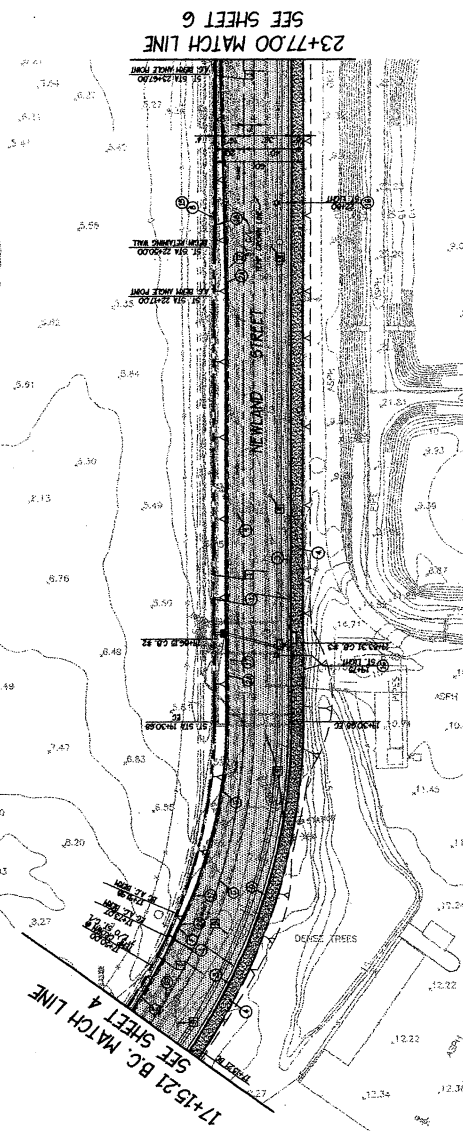
Underground Service Alert



Call TOLL FREE

1-800-422-4133

TWO WORKING DAYS BEFORE YOU DIG



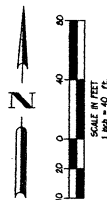
	DELTA OF BEARING	RADIUS	LENGTH	TANGENT
(1)	39°16'20"	350.00'	219.47'	113.37'
(2)	39°16'20"	348.00'	235.17'	121.44'
(3)	0°02'20"	334.50'	56.30'	27.71'
(4)	N 23°0'16" E	-	17.11'	-
(5)	23°0'16"	338.50'	134.68'	63.81'

CONSTRUCTION NOTES:

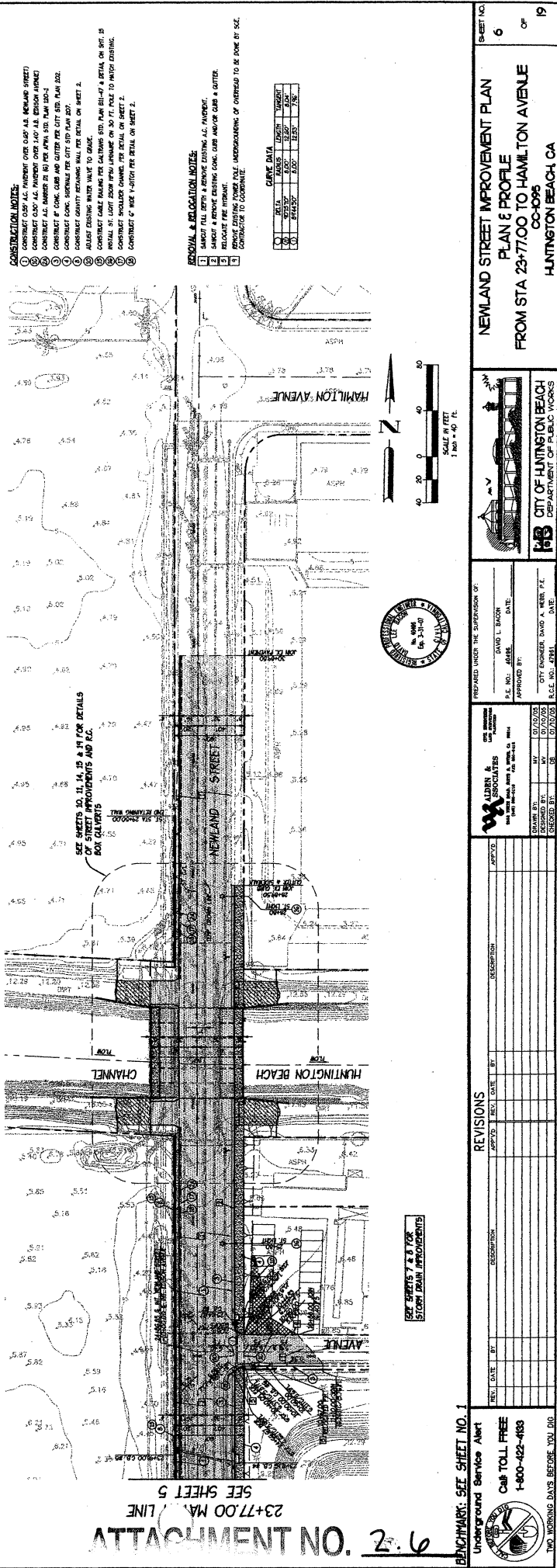
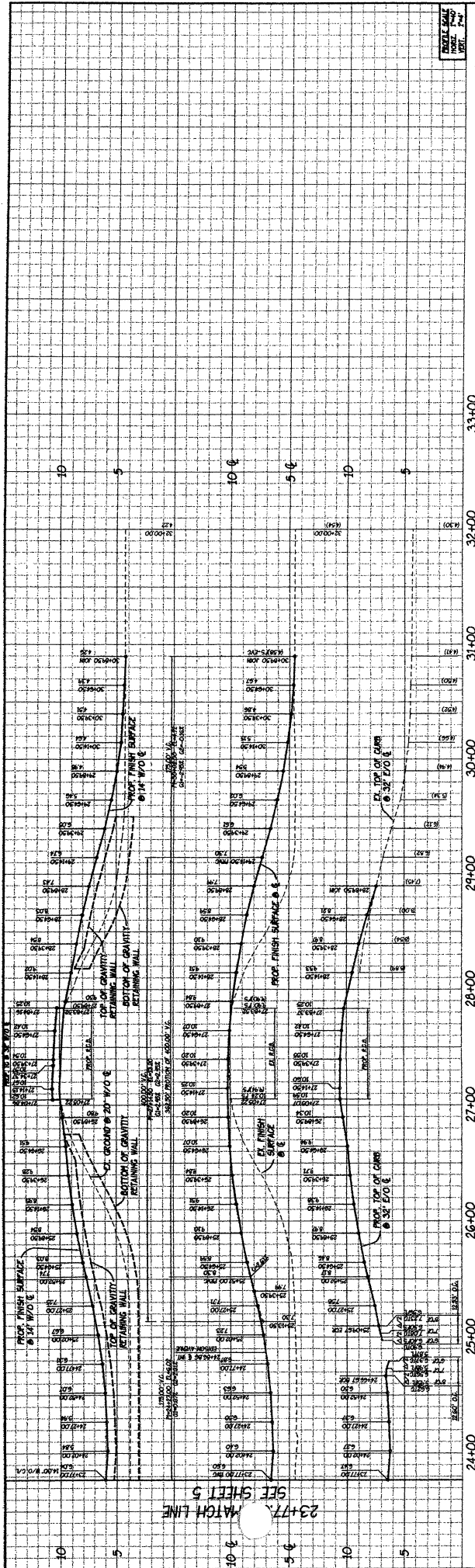
1. CONTRACTOR TO LOCATE AND REMOVE CURB 0.50' AS SHOWN (SEE DET.)
2. CONTRACTOR TO REMOVE 6" CURB AND 18" ASPHALT SURF. (SEE DET.)
3. CONTRACTOR TO CURB AND CONCRETE FOR CITY ST. FLAN 222.
4. CONTRACTOR TO CONCRETE SIDEWALK FOR CITY ST. FLAN 222.
5. CONTRACTOR TO REMOVE WALKWAY FOR DETAIL ON SHEET 7.
6. ADJUST DRIVING WALKWAY TO GRADE.
7. ADJUST DRIVING WALKWAY TO GRADE.
8. CONTRACTOR SHALL PAVING FOR DRIVEWAY 30" FLAN 214-47 * DETAIL ON SHEET 15
9. DETAIL 15: LAYOUT 30" DRIVEWAY ON 30" 1/2" FOLE TO MATCH EXISTING.
10. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.
11. CONTRACTOR TO WALK 1/2" DETAIL ON SHEET 7.
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95. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.
96. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.
97. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.
98. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.
99. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.
100. CONTRACTOR TO REMOVE EXISTING DRIVEWAY 7.

REMOVAL & RELOCATION NOTES:

1	SANICUT FULL DEPTH & REMOVE EXISTING A.C. PAVEMENT.
2	SANICUT & REMOVE EXISTING CONC. CURBS AND/OR CURB & GUTTER.
9	REMOVE EXISTING POWER POLE. UNDERGROUNDING OF OVERHEAD TO BE DONE BY S.C. CONTRACTOR TO COORDINATE.

[illegible]

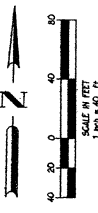
JAN 10 2005



CONSTRUCTION NOTES:
 1. EXISTING GRAVITY RETAINING WALLS SHALL BE REPAIRED OR REPLACED AS NECESSARY.
 2. EXISTING GRAVITY RETAINING WALLS SHALL BE REPAIRED OR REPLACED AS NECESSARY.
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REMOVAL & RELOCATION NOTES:
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STATION	EXISTING ELEVATION	PROPOSED ELEVATION
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25+00	5.00	5.00
26+00	5.00	5.00
27+00	5.00	5.00
28+00	5.00	5.00
29+00	5.00	5.00
30+00	5.00	5.00
31+00	5.00	5.00
32+00	5.00	5.00
33+00	5.00	5.00



NEWLAND STREET IMPROVEMENT PLAN
PLAN & PROFILE
 FROM STA 23+77.00 TO HAMILTON AVENUE
 CO-095
 HUNTINGTON BEACH, CA

REVISIONS

NO.	DATE	DESCRIPTION
1	01/10/05	ISSUED FOR PERMIT

PREPARED UNDER THE SUPERVISION OF:
 NAME: L. BACON
 DATE: 01/10/05
 APPROVED BY: [Signature]
 CITY ENGINEER: DAVID A. WEBB, P.E.
 CHECKED BY: [Signature]
 DATE: 01/10/05

CONTRACTOR:
 NAME: [Blank]
 ADDRESS: [Blank]
 CITY: [Blank]
 STATE: [Blank]
 ZIP: [Blank]

ATTACHMENT NO. 2.6

BENCHMARK: SEE SHEET NO. 1
 Underground Service Alert
 Call TOLL FREE
 1-800-422-4833
 TWO WORKING DAYS BEFORE YOU DIG

JUL 05 2006

City of Huntington Beach

Newland Avenue Widening & Storm Drain

Summary:

The City of Huntington Beach is currently finalizing the design for a project that will widen Newland Street from Pacific Coast Highway to Hamilton Avenue.

Newland Street right-of-way is 80' wide from the intersection of Pacific Coast Highway to approximately 700' north of the intersection, where the Right of Way changes to 40' East of centerline and 20' west of Centerline. This section of Newland Street is a popular path used by pedestrians and bicyclists to access the beach. Currently there is only a single lane of travel in each direction with no sidewalk or bike lane for a majority of the distance within the project area.

Additionally, a significant grade differential exists where Newland Street crosses the Huntington channel. This grade differential creates a significant stopping sight distance deficiency at the intersection of Newland Street and Edison Way, as cars traveling south on Newland Street do not have sufficient time to react if another car has stopped to make a left hand turn onto Edison Way.

The City's objective is to widen Newland Street, from Pacific Coast Highway to Hamilton Avenue, from the current width to a 44' - 48' wide traveled way section, with bike lanes, a sidewalk and center striped median. The proposed widening will also address stopping sight distance deficiency, by raising the road grade at the Huntington Channel and providing a left turn lane at the intersection of Newland and Edison Way. As part of the widening, 2 existing streetlights will be relocated, and 3 additional streetlights, similar to those existing, will be installed along the east side of Newland, per City of Huntington Beach standards.

It is anticipated that construction will occur in the Fall of 2006, and take approximately 6 to 8 months to complete.

The proposed widening improvements will impact the existing drainage along Newland St., requiring an unimproved drainage ditch to the east of the roadway to be replaced. The drainage ditch has had a history of problems, as there is no natural outlet for this ditch.

In previous years, the City had a pump system set up at the downstream end of the ditch to automatically turn on and pump the stormwater from the ditch, through a force main, to a culvert located at the intersection of Newland Street and Pacific Coast Highway. A few years ago, when there was concern over high bacteria levels within the coastal waters, the city removed the automated pump system during the dry season, to eliminate the ditch as a possible source of bacteria. The City would set up a temporary pump system during storm events to keep the ditch from flooding Newland Street.

It is proposed to replace the existing unimproved drainage ditch with a 39" RCP storm drain & associated catch basins. This will eliminate the need for a pump/force main to provide the drainage for Newland Street from the Huntington Channel to Pacific Coast Highway. In addition, the City will be installing a sewer line stub connecting into the OCSD Trunk Main in Newland Street, at the

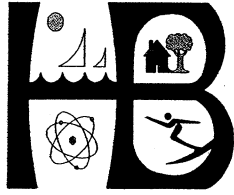
intersection of Newland & Edison for a future relocation of the existing sewer line serving the properties along Edison Way into the existing right-of-way.

A Reinforced Concrete Box (RCB) acts as a bridge where Newland Street crosses the Huntington Channel. In order to accommodate the road widening, the ends of this box must be lengthened within the channel, requiring the removal of the headwalls on the upstream and downstream ends, and forming and pouring of extensions to the ends of the RCB.

The county recently completed a significant capacity expansion of the Huntington channel, by driving sheet piles along the banks and removing fill, converting the channel from an earthen walled trapezoidal channel to a rectangular steel walled channel. The County stopped their sheet piling approximately 20' short of the Newland Street Bridge on both the upstream and downstream sides, in order to accommodate for the City's widening of the bridge. In order to provide interim protection of the existing bridge against erosion, the County placed Rip Rap to prevent scouring around the headwall of the RCB. As part of this project, the City will remove the rip-rap material placed within the channel during the County's recent work on the Huntington Channel, and clean out any sediment that accumulate within the existing RCB cells.

As part of the bridge widening within the Huntington Channel several existing utilities hung on the side of the existing RCB shall be relocated to pass underneath the expanded portion of the RCB. These utilities include a privately owned fuel line, and a City owned 12" water main. In addition the City will be installing a 36" steel sleeve underneath the upstream section of the lengthened RCB to minimize the impact to the channel for a future Water Transmission main.

Work within the channel will require the use of an excavator to remove the existing rip-rap material and to clear a portion of the channel floor to form the RCB extensions. Temporary dams or some other method of isolating the RCB from the channel flow will also be required to facilitate the construction of the lengthened sections. The method used will be at the contractors discretion, but could include the use of inflatable dams.



CITY OF HUNTINGTON BEACH

Planning Commission Communication

TO: Scott Hess, Acting Director of Planning

FROM: Flossie Horgan, Planning Commissioner *FH*

DATE: March 7, 2007

**SUBJECT: APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF
NEGATIVE DECLARATION NO. 05-05 AND COASTAL
DEVELOPMENT PERMIT NO. 05-07 (NEWLAND STREET
IMPROVEMENT PROJECT)**

City of Huntington Beach
MAR - 7 2007

I hereby appeal the Zoning Administrator's approval of Negative Declaration No. 05-05 and Coastal Development Permit No. 05-07 for the Newland Street Improvement Project based on the following:

I have concerns regarding the wetlands impacts and the water quality issues. Some provisions of the Huntington Beach certified LCP are not being followed, and water quality impacts from the urban runoff to the ocean are not being adequately addressed.

I have attached further discussion of my concerns.

JJ: cs

xc: Herb Fauland, Acting Planning Manager
Mary Beth Broeren, Principal Planner

ATTACHMENT NO. 4.1

March 7, 2007

TO: Scott Hess, Acting Planning Director

FROM Flossie Horgan

Re: Appeal from Zoning Administrator's Decision

Wednesday February 21, 2007

Petition Document: Negative Declaration No. 2005-005/Coastal Development Permit No 2005-007 (Newland Street Improvements)

Approved with Findings and Modified Conditions of Approval

I would like to appeal the above referenced decision to approve the Newland Street Improvements project to the Planning Commission for further consideration..

My concerns relate primarily to wetlands impacts and water quality concerns. I have concerns that provisions of the Huntington Beach certified LCP are not being followed, and that water quality impacts from urban runoff to the ocean are not being adequately addressed.

WETLANDS

According to the Natural Resources Chapter of the Coastal Element of the City of Huntington Beach General Plan (2001), a component of the City's Certified LCP, page IV-C-98, paragraph 47:

"Wetlands provide biological and aesthetic resources. These qualities should be maintained, enhanced and improved, where feasible (C 6.1.24, C 6.1.26, C 6.1 28, C 7.1.2, C 7.1.3, C 7.2.1, C 7.2.2, C7.2.3 and C 7.2.4)"

Also, coastal wetlands are protected by C 6.1.20, page IV-C-120, which states in part: "Limit diking, dredging and filling of coastal waters, wetlands, and estuaries to the specific activities outlined in Section 30233 and 30607.1 of the Coastal ActConduct any diking, dredging and filling activities in a manner that is consistent with section 30233 and 30607.1 of the Coastal Act (I-C 2, I-C-7, I-C-8).

However, there is no discussion or determination that the wetlands that would be impacted and filled by the Newland Street Improvement Project have met the requirements of Section 30233 of the Coastal Act, namely, are road widening and road improvements permitted under Section 30233 of the Coastal Act? Road widening does not appear to be one of the permitted uses under Section 30233 of the Coastal Act.

The Errata to Draft Mitigated Negative Declaration No. 05-05, page 13 of the Response to Comments for Draft Mitigated Negative Declaration No. 05-06, states that there is tidal habitat within the Huntington Beach Channel under the jurisdiction of the CDFG that would be impacted by the project, consisting of 0.07 acres. Included within this tidal habitat are .002 acres of pickleweed patches that do not require mitigation, according to the MND, but would be required to be considered under Section 30233. Also, there are 0.09 acres of freshwater marsh in the ditch adjacent to Newland within CDFG jurisdiction, for a total of 1.6 acres of wetlands impacted by the project under Section 30233. The report proposes to mitigate this loss at a 1:1 ratio.

However, the standard for review of wetlands issues and mitigation should fall under the Coastal Commission policies on wetlands and mitigation policies incorporated within Sections 30233 and 30607.1 of the Coastal Act, since these wetlands are in the coastal zone, and these sections are incorporated into the city's certified LCP.

See I-C 8, Environmental Review, C) 1. and 2., page IV-C-134 of the 2001 HB General Plan Natural Resources Chapter Coastal Element, which states: "Determine the necessity for mitigation Agreements or other coordination with the California Department of Fish and Game, California Coastal commission and/or federal agencies to obtain necessary permits for development that appear to affect habitat"

There is no evidence that the Coastal Commission staff was consulted concerning the mitigation agreement for this project. Typically, the Coastal Commission requires a 3:1 ratio for offsite mitigation, if the project is consistent with Section 30233 of the Coastal Act. Applying that ratio to this project is 3 times 0.16 acres equals 0.48 acres of mitigation.

However, the project proposes to restore the "Upper Magnolia Marsh" in a mitigation proposal that combines the Newland Street Improvement project with a proposed future Magnolia Street project that might impact approximately 0.4 acres of wetlands along Magnolia Street. The total acreage of restoration is 0.97 acres. The total acreage of both projects' wetlands impacts is 0.16 plus 0.4 acres equals 0.56 acres. A 3 to 1 ratio is thus 1.68 acres for both projects (3 times 0.56). Thus, there is a shortage of 0.71 acres of mitigation for both projects, if it is permissible to combine both projects at this time.

I have a question and concerns about future mitigation obligations and if such an arrangement to pre-mitigate a project such as the future Magnolia Street project is permissible under the LCP. I believe the Planning Commission, City Council, and Coastal Commission should review this agreement, if the project is found to be compatible with Section 30233 of the Coastal Act.

Moreover, the type of mitigation, being a salt-marsh restoration project is out-of-kind with the project's wetland impacts, which are fresh water impacts for .09 acres of the total 0.16 CDFG wetland acreage impacted by the project. This out-of-kind mitigation would be a further argument for increasing the mitigation ratio from 1:1 to 3:1.

WATER QUALITY

My other concern about the project involves the water quality impacts, as expressed by the commentators to the Draft Mitigated Negative Declaration, including the California Regional Water Quality Board, (CRWQCB), Coastkeeper, and Dr. Jan Vandersloot.

See page 7 of the Response to Comments, where the CRWQB expresses concern "that the proposed new storm drain will continue to convey dry and wet weather flows and their associated pathogenic bacteria loading to the ocean, via the AES outfall. It is already established that discharges from the storm drain via the AES outfall contributed to the elevated levels of pathogenic bacteria that have caused violations of beach water quality standards at Huntington State Beach. Pet waste along Newland St. has been identified as the most prominent source of these bacteria, and no management measures or Best Management Practices (BMP) have been implanted to control or eliminate that source."

The City proposes a gross pollutant separator device called a Continuous Deflector Separator or CDS unit just upstream of the existing catch basin at Pacific Coast Highway and Newland Street. However, this unit does not capture any bacteria or viruses in the runoff, as it only picks up trash in the runoff (see page 8 of the Response to Comments document).

The City states it is "currently working with the OCSD to address the possibility of a low flow diversion of runoff into the OCSD's existing 48" Trunk Sewer in Newland Street", but this is only a possibility and I think the project should be conditioned by the Planning Commission to ensure diversion of runoff into the sewer system.

The CRWQB also stated in its comment CRWQCB-5 that "The MND should address these issues and identify appropriate management alternatives. We believe that dry-weather runoff could be diverted into the Pacific Coast Highway trunk sewer (under Orange County Sanitation District jurisdiction) and eliminated as a potential source of the cause of violations."

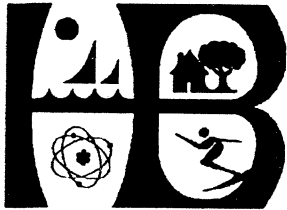
The CRWQB also stated in its CRWQB-6 that "We strongly recommend that the matter of continued discharges from City facilities via the AES ocean outfall should be carefully evaluated and that this project appears to provide a "ripe opportunity" to address the understandable concerns of AES regarding their responsibility for discharges originating off-site."

The CWRQB also stated in its CRWQCB-7 that "We believe the above issues may be better examined in a comprehensive Environmental impact Report" (see page 9 of the Response to Comments)

The Response to Comments to the CRWQB-6 and CRWQCB-7 comments both deferred the issue to the Zoning Administrator for consideration, but it does not appear that the Zoning Administrator took any actions relative to these concerns. Therefore, I believe the Planning Commission and possibly the City Council should address these important comments, since the Zoning Administrator did not.

The Water and Marine Resources section of the Natural Resources Chapter Coastal Element of the City of Huntington Beach General Plan, 2001, page IV-C-116, also has the goals of preventing degradation of marine resources in the coastal zone (Goal C6, Policies C 6.1.1, C 6.1.15, C 6.1.16, which encourages the Orange County sanitation district to accept dry weather nuisance flows into the sewer system for treatment prior to discharge (IC-12).

For all the above reasons, I request that the project be appealed to the Planning Commission.



**OFFICE of the ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH • CALIFORNIA**

~~~~~  
P.O. BOX 190

CALIFORNIA 92648

(714) 536-5271

**NOTICE OF ACTION**

February 22, 2007

City of Huntington Beach Public Works Department  
Douglas A. Erdman, PE, Associate Civil Engineer  
2000 Main Street  
Huntington Beach, CA 92648

**SUBJECT:** **NEGATIVE DECLARATION NO. 2005-005/COASTAL  
DEVELOPMENT PERMIT NO. 2005-007 (NEWLAND STREET  
IMPROVEMENTS)**

**APPLICANT:** City of Huntington Beach Public Works Department

**REQUEST:** To permit the widening and improvement of Newland Street from Pacific Coast Highway to Hamilton Avenue, including widening the reinforced concrete bridge at Huntington Channel, installation of storm drain improvements, and raising the profile of Newland Street to improve traffic visibility

**LOCATION:** Newland Street, between Pacific Coast Highway and Hamilton Avenue

**PROJECT PLANNER:** Jane James

**DATE OF ACTION:** February 21, 2007

On Wednesday, February 21, 2007 the Huntington Beach Zoning Administrator took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Zoning Administrator reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator is final unless an appeal is filed to the Planning Commission by the applicant or an aggrieved party. Said appeal must be in writing and must set forth in

ATTACHMENT NO. 5.1

detail the actions and grounds by and upon which the applicant or interested party deems himself aggrieved. Said appeal must be accompanied by a filing fee of One Thousand Two Hundred Eighty-Seven Dollars (\$1287.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and One Thousand Five Hundred Sixty-Nine Dollars (\$1569.00) if the appeal is filed by any other party. The appeal shall be submitted to the Department of Planning within ten (10) working days of the date of the Zoning Administrator's action. There is no fee for the appeal of a Coastal Development Permit to the California Coastal Commission.

In your case, the last day for filing an appeal is March 7, 2007.

This project is in the Appealable portion of the coastal zone. Action taken by the Zoning Administrator may not be appealed directly to the Coastal Commission unless Title 14, Section 13573 of the California Administrative Code is applicable. Section 13573(a)(3) states that an appeal may be filed directly with the Coastal Commission if the appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this article. The other three grounds for direct appeal do not apply. If the above condition exists, an aggrieved person may file an appeal within ten (10) working days, pursuant to Section 30603 of the Public Resources Code, in writing to:

South Coast Area Office  
California Coastal Commission  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302  
Attn: Theresa Henry  
(562) 590-5071

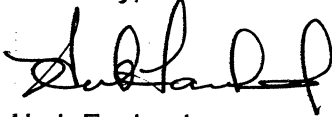
The Coastal Commission review period will commence after the City appeal period has ended and no appeals have been filed. Applicants will be notified by the Coastal Commission as to the date of the conclusion of the Coastal Commission review. Applicants are advised not to begin construction prior to that date.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact the project planner at (714) 536-5596 (email: [jjames@surfcity-hb.org](mailto:jjames@surfcity-hb.org)) or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,



Herb Fauland  
Acting Zoning Administrator

HF:JJ:jc  
Attachment

c: Honorable Mayor and City Council  
Chair and Planning Commission  
Penelope Culbreth-Graft, City Administrator  
Paul Emery, Deputy City Administrator  
Scott Hess, Acting Director of Planning  
Herb Fauland, Acting Planning Manager  
Eric Engberg, Division Chief/Fire Marshal  
Terri Elliott, Principal Civil Engineer  
Gerald Caraig, Permit-Plan Check Manager  
Property Owner  
Project File

**ATTACHMENT NO. 1**

**FINDINGS AND CONDITIONS OF APPROVAL**

**NEGATIVE DECLARATION NO. 2005-005/**

**COASTAL DEVELOPMENT PERMIT NO. 2005-007**

**FINDINGS FOR APPROVAL – NEGATIVE DECLARATION NO. 2005-005:**

1. The Negative Declaration No. 2005-005 has been prepared in compliance with Article 6 of the California Environmental Quality Act (CEQA) Guidelines. It was advertised and available for a public comment period of thirty (30) days. Comments received during the comment period were considered by the Zoning Administrator prior to action on the Negative Declaration and Coastal Development Permit No. 2005-007. As a result of comments received an Errata to Negative Declaration No. 2005-005 was prepared and considered by the Zoning Administrator prior to action on the subject entitlement.
2. Mitigation measures, incorporated into the attached conditions of approval, avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur. The proposed street improvement project will impact 0.16 acres of wetlands by construction of improvements in the Huntington Channel and by eliminating a drainage ditch on the east side of Newland Street. Loss of this wetland acreage will be fully mitigated through an agreement and payment of funds to the Wetlands and Wildlife Conservancy to restore an existing 1.597 acre site with water supply, grading, and vegetation removal resulting in a total 0.97 acre restored wetland area.
3. There is no substantial evidence in light of the whole record before the Zoning Administrator that the project, as mitigated through the conditions of approval for CDP NO. 2005-007, will have a significant effect on the environment.

**FINDINGS FOR APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 2005-007:**

1. Coastal Development Permit No. 2006-007 for the improvements to Newland Street between Pacific Coast Highway and Hamilton Avenue, including widening the reinforced concrete bridge at Huntington Channel, installation of storm drain improvements, and raising the profile of Newland Street to improve traffic visibility, conforms with the General Plan, including the Local Coastal Program.
2. The project is consistent with the requirements of the CZ Overlay District, the base zoning district, as well as other applicable provisions of the Municipal Code. The street widening and improvement project is compatible with zoning designations on the adjacent properties. No above ground structures, other than street lights and pet waste bag stations are proposed in conjunction with the street improvement project. New sidewalks, landscaping, and infrastructure improvements are all consistent with surrounding zoning designations.

3. At the time of occupancy the proposed development can be provided with infrastructure in a manner that is consistent with the Local Coastal Program. The proposed project includes infrastructure improvements to the street system, storm drain, and bridge over Huntington Channel. No other infrastructure improvements, other than standard maintenance, are necessary for the long-term operation of the proposed street improvement project.
4. The development conforms with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The proposed street improvement project will not result in negative impacts to public access and recreation opportunities within the Coastal Zone. Conversely, the projects results in improved access to coastal resources by improving the quality of the street, restriping bike lanes on both the east and west sides of Newland Street, improving the sight visibility over the Huntington Channel, and constructing a sidewalk on the east side of Newland Street between Pacific Coast Highway and Huntington Channel, where no sidewalk exists today.

**CONDITIONS OF APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 2005-007:**

1. The site plan, floor plans, and elevations received and dated March 11, 2006 shall be the conceptually approved design.
2. Prior to issuance of grading permits, the City of Huntington Beach shall enter into an agreement with the Huntington Beach Wetlands Conservancy for restoration of the Upper Magnolia Marsh, a 1.6 acre site owned by the Conservancy. The agreement shall identify the three restoration elements of water supply, grading, and vegetation removal, shall provide for full funding of the \$70,835.00 project from the City to the Conservancy, and shall obligate the Conservancy to carry out the restoration and monitoring of the project pursuant to the standards of the California Department of Fish and Game. The full \$70,835.00 shall be transferred from the City to the Conservancy prior to issuance of grading permits for the Newland Street Improvement project but the City may also obtain restoration credits and satisfy mitigation requirements for approximately 0.4 acres of wetlands anticipated to be effected by the Magnolia Street Improvement project in the future (Mitigation Measure BIO 1).
3. During construction, an inflatable dam or similar device shall be utilized on only one side of the channel at a time. Water shall be routed around the construction area and continuous water exchange up and down the channel shall be maintained. (Mitigation Measure BIO 2).

**INDEMNIFICATION AND HOLD HARMLESS CONDITION:**

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

March 21, 2007

To: Janet James  
City of HB Planning Department  
2000 Main Street  
HB, CA 92648

From: John Carter  
21141 Banff Lane  
HB, CA 92646

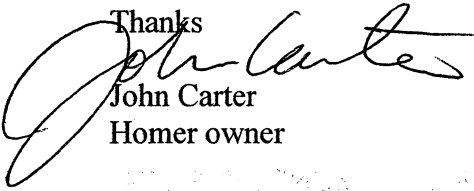
Dear Janet,

I would like to support the City of Huntington Beach with the planned widening of **NEWLAND STREET** from Doncaster to PC H on both sides. I live in the area and we need this improvement for **SAFTEY**. We currently have a **VERY POOR** road which is a **HAZARD** to bikes and individuals walking to the beach. We need as many improvements that we can get such as widening, side walks and improved sight lines over the bridge. The road also **FLOODS** in any amount of rain which makes for dangerous driving since most automobiles go around the puddles by crossing the **YELLOW DOUBLE LINES**, which is unsafe.

I ask anyone from the **CITY COUNCIL OR PLANNING COMMISSION** to drive down this street and they will see how unsafe this road is right now. We have had a lot of accidents and one car hit the telephone pole next to the poorly designed drainage ditch. This ditch does **NOTHING** but drain water onto the **STREET** which creates **LARGE AMOUNTS** of flooding on the other side. The City has to but flood signs up whenever we have threats of rain, this is not the sign of a well designed street.

Please address this issue with a new street that is safe for all who use it: bikes, cars and individuals all trying to get to the beautiful beach and the end of the street.

Thanks

  
John Carter  
Homer owner

City of Huntington Beach  
MAR 22 2007

ATTACHMENT NO. 6





City of Huntington Beach Planning Department  
**STUDY SESSION REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, Director of Planning  
**BY:** Tess Nguyen, Associate Planner *TN*  
**DATE:** April 10, 2007  
**SUBJECT:** **ENTITLEMENT PLAN AMENDMENT NO. 06-07 (LOWE'S RETAIL PAD SITE MODIFICATION – AMENDMENT TO CONDITIONAL USE PERMIT NO. 00-31 – 8291 WARNER AVENUE)**

---

**PROJECT REQUEST AND SPECIAL CONSIDERATIONS**

Entitlement Plan Amendment No. 06-07 represents a request for the following:

To amend Condition of Approval No. 8 of Conditional Use Permit No. 00-31 which limited the construction of a restaurant building on the vacant parcel adjacent to Lowe's Home Improvement Warehouse to a maximum of 8,500 square feet.

Condition of Approval No. 8 states:

Depending on the uses proposed, the restaurant pad and Parcel 3 may be subject to separate entitlement prior to issuance of grading permits for the pad site. Construction of the restaurant pad building shall not result in any loss of landscaping as shown on the September 5, 2003 site plan and a maximum 8,500 square foot building shall be constructed.

The proposed amendment is to allow a maximum building area of 14,200 sq. ft. on the vacant parcel. The developer for the site is pursuing two development options at the same time:

- Option 1: Develop the site with America's Tires (6,400 sq. ft.) and Wendy's or a similar fast food restaurant (3,212 sq. ft.). The total building square footage would be 9,612 sq. ft.
- Option 2: Develop the site with America's Tires (6,400 sq. ft.) and a retail building (7,800 sq. ft.). The total building square footage would be 14,200 sq. ft.

## **CURRENT LAND USE, HISTORY OF SITE, ZONING AND GENERAL PLAN DESIGNATIONS**

| <b>LOCATION</b>                                  | <b>GENERAL PLAN</b>                                                                                                | <b>ZONING</b>                | <b>LAND USE</b>                                             |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------------------------------|
| Subject Property                                 | MV-F10-d-a (Mixed Use Vertical—Max. 1.5 Floor Area Ratio—Max. 25 du/ac—Design Overlay—Automobile District Overlay) | CG (Commercial General)      | Vacant                                                      |
| North of Subject Property                        | MV-F10-d-a                                                                                                         | CG                           | Ocean View Unified School District Bus Maintenance Facility |
| South of Subject Property (across Warner Avenue) | RL-7 (Residential Low Density – Max. 7 du/ac)                                                                      | RL (Residential Low Density) | Single-Family Residential                                   |
| East of Subject Property                         | MV-F10-d-a                                                                                                         | CG                           | Vacant                                                      |
| West of Subject Property                         | MV-F10-d-a                                                                                                         | CG                           | Lowe's Home Improvement Warehouse                           |

On October 28, 2003, the Planning Commission approved Conditional Use Permit No. 00-31 for a 135,666 sq. ft. Lowe's Home Improvement Warehouse along with a 21,416 sq. ft. garden center and an 8,500 sq. ft. restaurant pad located at the northeast corner of Beach Boulevard and Warner Avenue.

On October 27, 2005, the Design Review Board approved Design Review No. 06-26 for a 3,212 sq. ft. Wendy's restaurant and a 3,696 sq. ft. retail building.

On July 13, 2006, the Design Review Board approved Design Review No. 06-18 for a 6,400 sq. ft. automotive tire retail building.

## **APPLICATION PROCESS AND TIMELINES**

### **DATE OF COMPLETE APPLICATION:**

Entitlement Plan Amendment: January 26, 2007

### **MANDATORY PROCESSING DATE(S):**

July 25, 2007 (Within 180 days from application deemed complete date when CEQA determination relies on a previously prepared EIR)

Entitlement Plan Amendment No. 06-07 was filed on December 18, 2006 and deemed completed on January 26, 2007.

## **CEQA ANALYSIS/REVIEW**

The requested entitlement plan amendment was determined to be within the scope of the Lowe's Home Improvement Warehouse Environmental Impact Report (EIR No. 00-01) which was certified by the Planning Commission on October 28, 2003.

## **COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES**

The Public Works Department reviewed the request to increase the total permitted building square footage on the vacant parcel and determined that the change would not result in a significant increase in site-

generated traffic for the peak hours. The trips generated would be consistent with the analysis presented in the traffic study of the Lowe's Environmental Impact Report. Therefore, the proposed increase in building square footage would not be expected to generate the need for any additional mitigation measures for the project or a change in any traffic design features for project access.

The Building and Fire Departments reviewed the request to increase the total permitted building square footage on the vacant parcel and had no comments.

### **PUBLIC MEETINGS, COMMENTS AND CONCERNS**

On February 8, 2007, the Design Review Board recommended approval of the 7,776 sq. ft. retail building to the Planning Commission. To date, there have been no comments from the public regarding this request. A noticed public hearing for Entitlement Plan Amendment No. 06-07 is tentatively scheduled for the April 24, 2007, Planning Commission meeting.

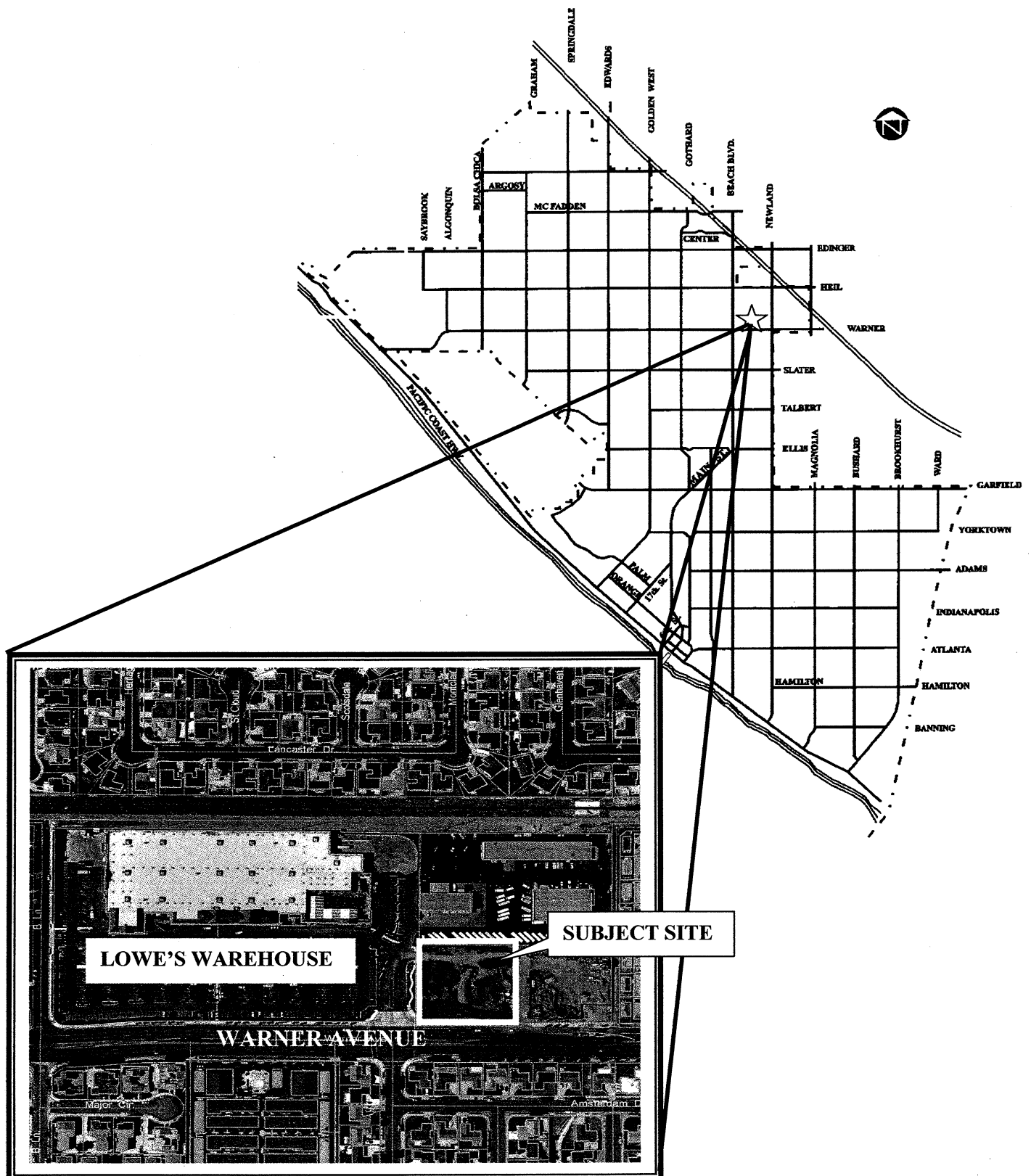
### **PLANNING ISSUES**

The primary issue for the Planning Commission to consider in conjunction with this entitlement plan amendment request is the increase in development and related impacts on surrounding commercial and residential properties.

### **ATTACHMENTS:**

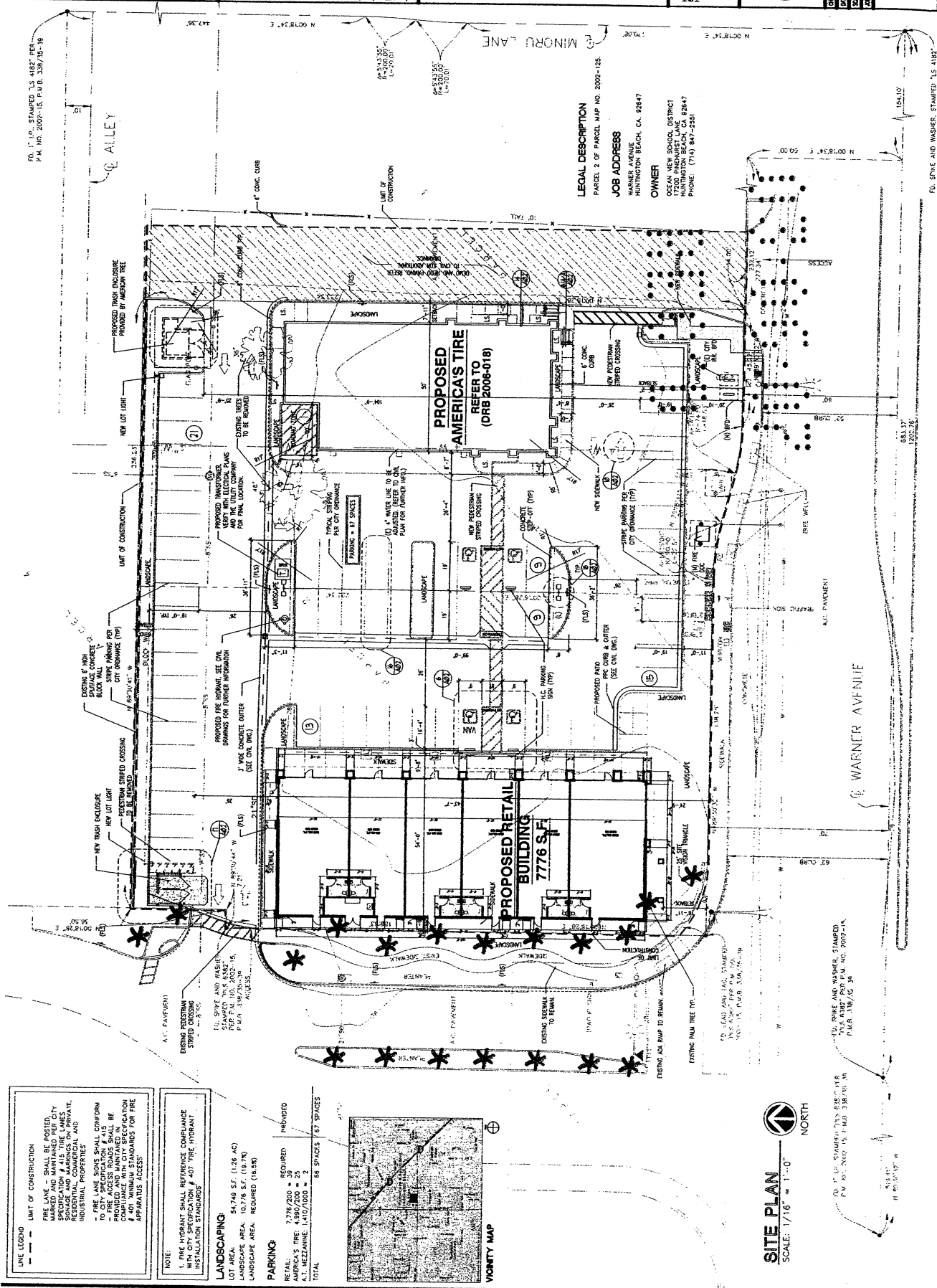
1. Vicinity Map
2. Site plan, floor plan, and elevations dated March 6, 2007
3. Project narratives dated December 18, 2006 and March 9, 2007
4. Planning Commission Notice of Action - CUP No. 00-31 dated October 29, 2003
5. Traffic Generation Review by the Public Works Department dated March 5, 2007

SH:HF:RR:TN:cs



## VICINITY MAP

Entitlement Plan Amendment No. 06-07  
 Lowe's Retail Pad Site Modification – 8291 Warner Avenue  
 CITY OF HUNTINGTON BEACH



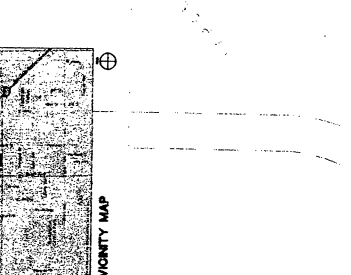
**LINE LEGEND**  
--- LIMIT OF CONSTRUCTION  
--- FIRE LINE - SHALL BE POSTED, MARKED AND MAINTAINED PER CITY SPECIFICATION  
--- SPACED AND MAINTAINED PER CITY SPECIFICATION  
--- RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL DISTRICTS  
--- TO CITY SPECIFICATION  
--- FIRE ACCESS ROADS SHALL BE MAINTAINED PER CITY SPECIFICATION  
--- COMPLIANCE WITH CITY SPECIFICATION  
--- APPROVED ACCESS

**NOTE:**  
1. FIRE HYDRANT SHALL RETAIN COMPLIANCE WITH CITY SPECIFICATION # 407 FIRE HYDRANT DISLOCATION STANDARDS

**LANDSCAPING**  
LOT AREA: 10,124 S.F. (1.26 AC)  
LANDSCAPE AREA: 10,124 S.F. (1.26 AC)  
LANDSCAPE AREA: 140,100 S.F. (3.21 AC)

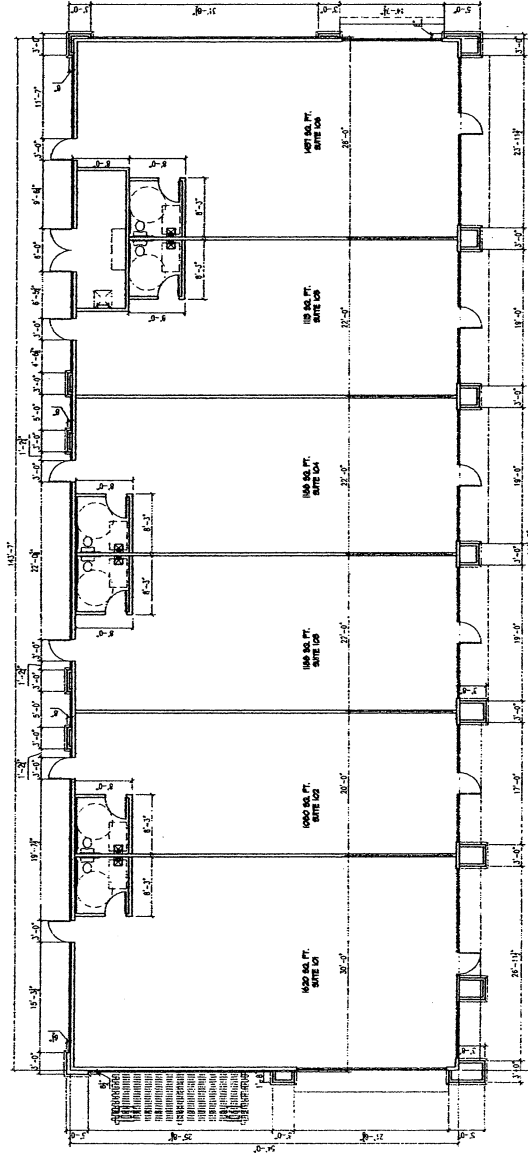
**PARKING**  
RETAIL: 7,776/200 = 39 REQUIRED  
AMERICA'S TIRE: 4,800/200 = 24 REQUIRED  
A.T. MEZZANINE: 140/1000 = 14 REQUIRED  
TOTAL: 66 SPACES, 67 SPACES

**PROVIDED**  
RETAIL: 7,776/200 = 39 REQUIRED  
AMERICA'S TIRE: 4,800/200 = 24 REQUIRED  
A.T. MEZZANINE: 140/1000 = 14 REQUIRED  
TOTAL: 66 SPACES, 67 SPACES

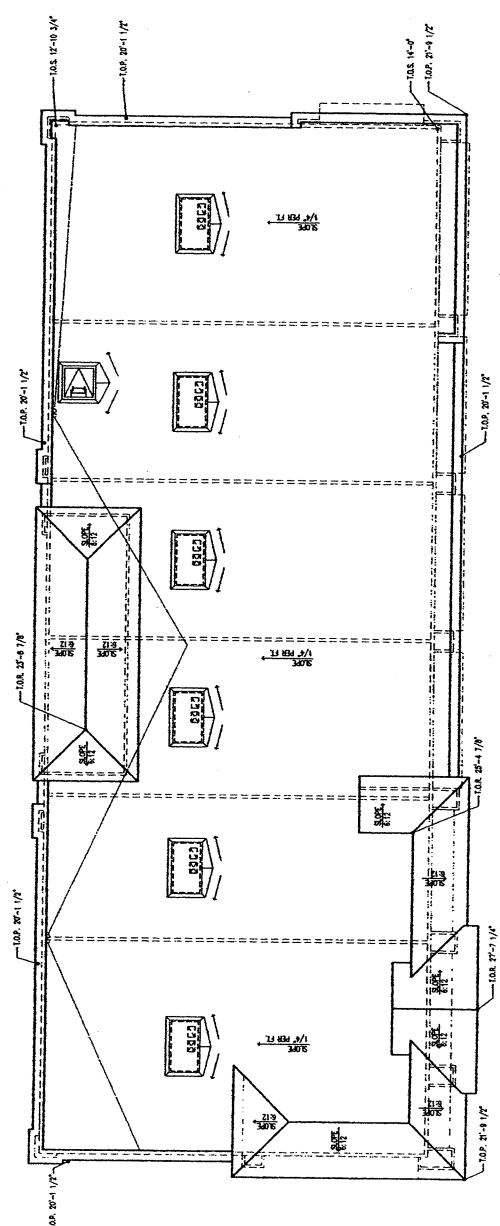


**SITE PLAN**  
SCALE: 1/16" = 1'-0"  
NORTH  
TO: 1" BY STAMPED, STAMPED  
P.M. NO. 2009-15, P.M.D. 3/8/09  
PAGES: 118/120



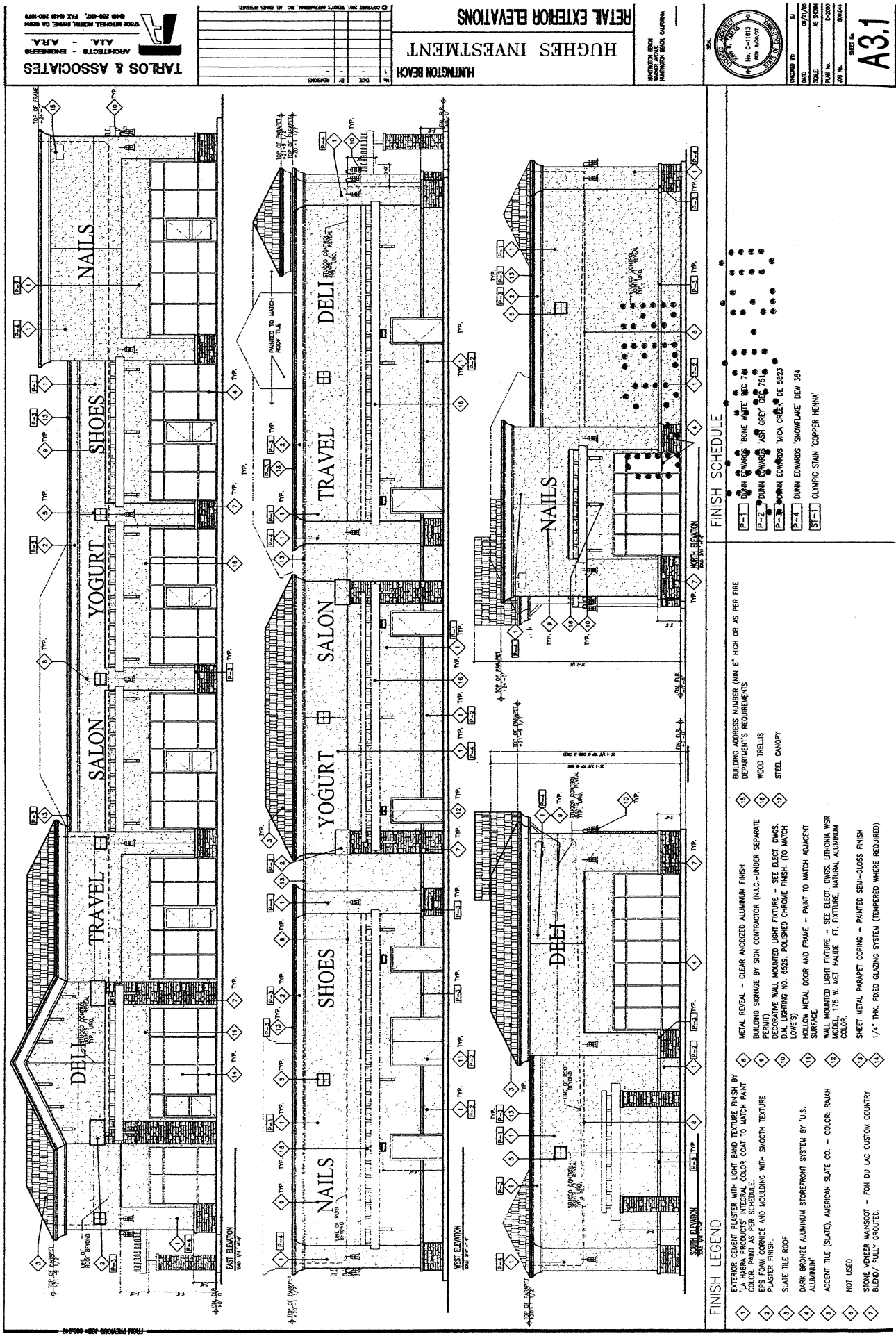


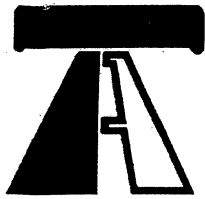
~~FLOOR PLAN~~  
~~SCALE: 1/8" = 1'-0"~~



ROOF PLAN







**TARLOS**  
& ASSOCIATES

ARCHITECTS & ENGINEERS  
**AIA, ARA**  
www.tarlos.com

17802 MITCHELL NORTH, IRVINE, CA 92614 □ TEL: (949) 250-4117 □ FAX (949) 250-1676 □ E-mail: jtarlos@tarlos.com

December 18, 2006

Tess Nguyen  
City of Huntington Beach  
2000 Main St.  
Huntington Beach, CA 92648

City of Huntington Beach

DEC 18 2006

**RE: Hughes Investments – Entitlement Plan Amendment to revise Condition #8 of CUP 200-31.**

Dear Tess Nguyen,

On behalf of our client, Hughes Investments, Tarlos and Associates respectfully submits this written narrative as an attachment to the Entitlement Plan Application. We seek the approvals of the following:

- To change the limitation on the total maximum building size of 8,500 sq. ft. as stipulated in Condition #8 of Conditional Use Permit No. 2000-31 to allow a new 7,776 (gross) sq. ft. multi-tenant retail building adjacent to an approved 4,990 sq. ft. America's Tire Store within Parcel 3 of the Lowe's Shopping.

**Project Description**

Proposed is a new construction of a new multi-tenant retail building within Parcel 3 of the Lowe's Shopping Center on Warner Ave. The proposed development involves the modification of an approved site plan and elevations for a Wendy's Restaurant with a drive thru to propose a new multi tenant retail building.

The proposed new building will be 7,776 (gross) sq. ft., (7,626 sq. ft. (net lease area)) multi-tenant retail building located within a lot area of approximately 54,749 sq. ft. This building will be located along the west side of the parcel adjacent to an 4,990 square foot America's Tire Store at the east side of the parcel. The building proposes up to six (6) tenants with individual square footages ranging in sizes from 1,080 to 1,620 sq. ft. However, sizes may be modified depending on the needs of these tenants. Final determination on the individual tenants have not been established at this time, as most lease agreements will be based on this "shell" building's design and layout to be approved. Therefore, determination on use, project services, hours of operation, and employee information cannot be stated at this time.

The proposed construction is will be a Type V-N with the exterior to be consistent with the design of the existing Lowe's and the adjacent America's Tire Store. Architectural elements of the existing shopping center such as accent tiling, stone veneer, dark bronze aluminum storefront, trellis elements, and decorative wall mounted lighting fixtures will be incorporated into this building. Signage is to be determined by each individual tenant and all approvals will be individually sought.

The lot provides a common parking area in which will provide a total of 71 spaces. Of this total parking area, the new retail area will provide thirty-seven (37), spaces and two (2) ADA compliant spaces. Access to the site will be from two driveway approaches located along the north portion of Warner Ave.

REGISTRATIONS IN ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, WYOMING.

MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS

AMERICAN REGISTERED ARCHITECTS

**ATTACHMENT NO. 3.1**

### **Existing Conditions**

The site is within an existing fully developed Lowe's Shopping Center. However, the subject site is presently vacant. The site provides access with existing curbs and landscaping throughout the center and the perimeter of the lot. The sidewalk and paving within the Center is in good condition. All utilities are underground and available.

In communications with the Planning Department, it has been determined that this project/site is not located within a Hazardous Waste and Substance site pursuant to Section 65962.5 of the Government Code.

### **Nature and Reason Necessitating an Entitlement Plan Amendment**

Per item No. 8 of the Conditions of Approval for CUP 2000-31, the subject parcel (Parcel 3), is subject to a maximum 8,500 square of total building area. This condition was imposed on the original site plan that was approved on September 5, 2003. This original site plan was approved with only one stand-alone restaurant proposed on this parcel.

Unfortunately, this original tenant withdrew and the landlord (*Hughes Investments*), secured a new agreement with Wendy's Restaurants to develop a new fast food restaurant on the west side site and propose a future tenant on the east side of this site. Since then, a 3,212 square foot Wendy's was approved under CUP 0031 and Hughes secured the entitlement for 4,990 square foot America's Tire Store as the east side tenant. In both approvals, the combined square footages of the Wendy's and America's Tire Store did not exceed the 8,500 square footage limitation.

Although approved, Wendy's restaurant decided not to continue with the development of the site. This resulted in Hughes having to reinvestigate the feasibility of the site to either attract a new quick service restaurant or retail tenant that would be complimentary to the shopping center and approved America's Tire Store. It was finally decided to propose a 7,776 square foot multi tenant retail building within the area that was approved for the Wendy's restaurant.

Although the overall design was approved, the change in the building footprint required a filing of a new Design Review Application. This Design Review Application was filed on October 15, 2006. However, due to the proposed new square footage of 7,776 square feet, this Design Review requires separate application to amend CUP 2000-31 to increase the maximum square footage since the combined square footage of the new retail building and tire store results in a total of 12,766 square feet. Any request to revise an item from Condition of Approval can only be approved by filing an Entitlement Plan Amendment.

### **Project Suitability Findings**

The original limitations on square footage were placed as a result of a much larger stand-alone restaurant exceeding 6,000 square feet. It is presumed that the 8,500 square foot restriction was imposed so that any future increase in restaurant square footage or any future new construction on the Parcel would not compromise parking requirements, Floor Area Ratio, and landscaping for that site. However, since the approval of CUP 2000-31, the original tenant has withdrawn resulting in redesign and the securing of new entitlements for new tenants.

The proposed multi-tenant retail building is consistent with the CG Zoning and is consistent with the General Plan Land Use Elements that designates the subject property for retail commercial uses.

Furthermore, the revised site plan still complies with the development standards set forth in the City's Zoning Ordinance.

The proposed increase will not adversely affect the existing and surrounding properties and this multi tenant building will be more complimentary to the existing shopping center than a stand-alone restaurant or fast-food restaurant with a drive-thru. This new multi-tenant building site layout will forfeit the approved drive-thru resulting in a less intensified use than what was originally approved. Additionally, any conditions or development restrictions included in the final approval of this site can be applied to the future tenants who will ultimately secure their own use specific entitlements.

Although there is an increase in the total square footage, this site plan will not increase the existing area and since the site will not propose a drive-thru. Since the drive-thru is no longer proposed, it will not generate excessive vehicular traffic-generating capacity, noise, vibrations, and other factors associated with drive-thru restaurants that tend to make the general environment less desirable for existing and planned developments surrounding the area.

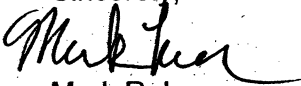
The proposed physical and development characteristics will not be detrimental in any way to the character, design, image, and architectural appeal of any existing or planned developments of the zone classification as this project only seeks to incorporate a minor change by revising the maximum allowable square footage for this site. The proposed multi tenant building will be physically compatible with the architectural design of the overall shopping center. To achieve this, the applicant has been in close communication with this Planning Department to revise the architectural look and elements to match the center and his design will be finalized at the Design Review phase (DR 06-035), and not within this Entitlement Plan Amendment.

The revised site, grading, and landscape plans show that all development standards can be met even with this increase in total square footages. The proposed multi tenant building will bring a desired community opportunity on what would be an underutilized area of the shopping center if left as is and undeveloped. A multi tenant building provides a better use of the site as it will provide additional shopping choices for residents rather than a single use restaurant.

The plans submitted are consistent with prior the prior approvals for the Wendy's restaurant and the development standards are satisfied. The proposed multi tenant building will be complimentary to the existing shopping center and will not unreasonably diminish or impair the public health, safety, comfort, morals or welfare of the residents in that area of Huntington Beach.

Please feel free to contact me at (949) 250-4117 should you have any questions. Thank you in advance for your consideration.

Sincerely,



Mark Raber  
Project Representative  
Tarlos and Associates

**Nguyen, Tess**

---

**From:** Mark Raber [mraber@tarlos.com]  
**Sent:** Friday, March 09, 2007 8:26 AM  
**To:** Nguyen, Tess  
**Subject:** RE: EPA--8291 Warner Avenue

Tess,

Per your e-mail below regarding EPA 06-007, we are revising the requested square footage to be 14,200 square feet. Please note this on the application so that we may proceed going to Planning Commission. Please notify us when we are scheduled and let us know if you need additional information.

Sincerely,  
 Mark Raber  
 Tarlos and Associates  
 17802 Mitchell North  
 Irvine, CA 92614  
 (949) 250-4117

-----Original Message-----

**From:** Nguyen, Tess [mailto:tnguyen@surfcity-hb.org]  
**Sent:** Wednesday, March 07, 2007 1:37 PM  
**To:** Mark Raber  
**Subject:** EPA--8291 Warner Avenue

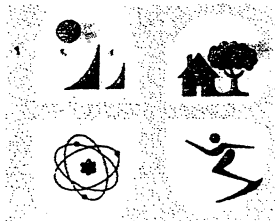
Hi Mark,

I have received the plans that were submitted on March 6, 2007. I also received the traffic generation from Public Works/Traffic. The increase in square footage to include the America's Tires and new retail building will not require additional mitigation measures for the project. The Entitlement Plan Amendment (EPA) can now be scheduled for Planning Commission hearing. I still need from you the total square footage requested for the EPA. It was previously requested for 13,000 sf. With the changes involving America's Tires, the total square footage has changed. Please let me know the new square footage so I can proceed with the EPA. Please let me know if you have any questions.

Tess Nguyen  
 Associate Planner  
 City of Huntington Beach  
 (714) 374-1744 phone  
 (714) 374-1540 fax  
 tnguyen@surfcity-hb.org

3/28/2007

ATTACHMENT NO. 3.4



# City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

## DEPARTMENT OF PLANNING

Phone  
Fax

536-5271  
374-1540  
374-1648

### NOTICE OF ACTION

October 29, 2003

Paul Rothenberg  
Canyon Consulting  
4665 MacArthur Court, Ste. 200  
Newport Beach, CA 92660

**SUBJECT:** ENVIRONMENTAL IMPACT REPORT NO. 00-01/TENTATIVE PARCEL MAP NO. 2002-125/CONDITIONAL USE PERMIT NO. 00-31 (LOWE'S HOME IMPROVEMENT WAREHOUSE/NORTHEAST CORNER OF BEACH BOULEVARD AND WARNER AVENUE)

**APPLICANT:** Paul Rothenberg, Canyon Consulting

**REQUEST:** EIR: An analysis of potential environmental impacts associated with a zoning map amendment request to change the zoning on the former Rancho View School from Public-Semipublic to General Commercial and a request for commercial development consisting of the redevelopment and intensification of a 25.6-acre site consisting of three areas (A, B1, and B2). The applicant proposes to develop a Lowe's Home Improvement Warehouse and a restaurant pad on the former Rancho View School site (Area A). Associated improvements include new parking, landscaping, and demolition of the former elementary school. The five Ocean View Little League baseball fields require relocation under the proposed plan. In addition, EIR No. 00-01 analyzes the potential future development and intensification of an adjacent 6.3-acre project site with commercial/retail, office, and restaurant uses located at the northeast corner of Beach Boulevard and Warner Avenue (Area B1). No development is proposed in Area B1 at this time. Also included in the project site is the Ocean View School District Bus Maintenance Facility (Area B2) located east of Rancho View School. No development is proposed in Area B2 at this time. TPM: A subdivision map to consolidate multiple parcels on the former Rancho View School into four parcels for commercial development purposes. The map includes right of way dedications along Warner Avenue. CUP: To permit the construction of a 135,666 sq. ft. Lowe's Home Improvement Warehouse along with a 21,416 sq. ft. garden center and an 8,500 sq. ft. restaurant pad. The proposal includes a request for 19.5% of the total parking stalls as compact size.

**PROPERTY OWNER:**

Dr. James Tarwater, Superintendent, Ocean View School District  
17200 Pinehurst, Huntington Beach 92647

**LOCATION:**

Bounded by Warner Avenue on the south, Beach Boulevard on the west, Roubidoux Drive on the north, and multi-housing units located just west of Minoru Lane on the east. The project does not include the existing Southern California Edison transfer station located at the northwest corner of B Street and Warner Avenue.

ATTACHMENT NO. 4.1

**DATE OF  
ACTION:**

October 28, 2003

On Tuesday, October 28, 2003, the Huntington Beach Planning Commission took action on your application. Environmental Impact Report (EIR) No. 00-01 was certified as adequate and complete in accordance with CEQA requirements by approving Resolution No. 1586. Tentative Parcel Map No. 2002-125 and Conditional Use Permit No. 00-31 were approved with findings and modified conditions of approval (attached).

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. A filing fee shall also accompany the notice of appeal. The appeal fee is \$700.00 for a single-family dwelling property owner appealing the decision on his/her own property. The appeal fee is \$2,025.00 for all other appeals. In your case, the last day for filing an appeal and paying the filing fee is November 7, 2003.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.


You are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to *Government Code* §66020.

If there are any further questions, please contact Jane James, Senior Planner at (714) 536-5596, or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Howard Zelefsky, Secretary  
Planning Commission

By:

  
Herb Fauland, Principal Planner

**Attachments**

1. EIR No. 00-01 CEQA Findings of Fact with Statement of Overriding Considerations
2. EIR No. 00-01 Mitigation Monitoring Program
3. Tentative Parcel Map No. 2002-12 and Conditional Use Permit No. 00-31 Findings and Conditions of Approval

c: Property Owner

## FINDINGS AND CONDITIONS OF APPROVAL

### TENTATIVE PARCEL MAP NO. 2002-125/ CONDITIONAL USE PERMIT NO. 00-31

#### FINDINGS FOR APPROVAL - TENTATIVE PARCEL MAP NO. 2002-125:

1. Tentative Parcel Map No. 2002-125 for the subdivision of 17.4 acres into four general commercial lots, minimum 1.2 acres in size access to a public street either by direct frontage or irrevocable access agreement is consistent with the General Plan Land Use Element designation of MV-F10-d-a (Mixed Use-Vertical Integration of Housing-1.5 Floor Area Ratio-Design Overlay-Auto District Overlay) on the subject property, or any applicable specific plan, or other applicable provisions of this Code because the subdivision will provide a consolidated development consistent with the design concept envisioned by the General Plan and Urban Design Guidelines.
2. The site is physically suitable for the type and density of development. The 17.4 acre project site is generally flat, rectangular, and provides the necessary area for development by consolidating multiple parcels consistent with the intensity and density of the General Plan Land Use designation and the proposed General Commercial zoning district. With the implementation of mitigation measures as described in EIR No. 00-01, the site is suitable for development.
3. The design of the subdivision or the proposed improvements will not cause serious health problems or substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. Notwithstanding the foregoing, the Planning Commission may approve such a tentative map if an environmental impact report was prepared with respect to the project and a finding was made that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.
4. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision unless alternative easements, for access or for use, will be provided. The tentative map provides all the necessary easements and access requirements of the City for the public and provides the necessary public improvements. The improvements include dedications, curbs, gutters, sidewalks, streets, and easements with reciprocal access between properties to adequately serve the site and adjacent properties.

#### FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 00-31:

1. Conditional Use Permit No. 00-31 for the establishment, maintenance and operation of an approximate 135,666 square foot Lowe's Home Improvement Warehouse with a 24,416 sq. ft. garden center, an approximate 8,500 sq. ft. restaurant pad, to allow 19.5% (126 spaces) of the 647 total parking spaces on the Lowe's site as compact in size, and to allow designated areas for permanent outdoor display of merchandise will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The project has been evaluated for compatibility with the surrounding neighborhood and with the conditions of approval imposed, the project will be designed to address separation to adjacent properties, provides adequate setbacks, does not exceed building height, provides code required landscaping, provides the required parking to serve the uses on site, and meets the goals and policies of



the General Plan. In addition, the provision of compact parking spaces provides an efficient use of the parking lot, maximizes the total number of parking spaces and provides an efficient layout of the parking design.

2. The conditional use permit will be compatible with surrounding uses because residential uses are adequately buffered from the commercial development, noise impacts are mitigated through design improvements, delivery hours are restricted to daytime only, and Ocean View School District buses, Lowe's delivery vehicles, and customers can safely utilize the main driveway entrance from Warner Avenue.
3. The proposed request to construct an approximate 135,666 square foot Lowe's Home Improvement Warehouse with a 24,416 sq. ft. garden center, to allow 19.5% (126 spaces) of the 647 total parking spaces on the Lowe's site as compact in size, to allow areas for permanent outdoor display of merchandise, and to construct an 8,500 sq. ft. restaurant pad, will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance. The proposed development plan complies with the zoning development standards and land use provisions contained in the General Commercial zoning district by providing code required minimum setbacks, minimum landscaping, minimum parking, maximum building height, and maximum floor area ratio.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of MV-F10-d-a (Mixed Use-Vertical Integration of Housing-1.5 Floor Area Ratio-Design Overlay-Auto District Overlay on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. Land Use Element

Goal LU 1: Achieve development that maintains or improves the City's fiscal viability and reflects economic demands while maintaining and improving the quality of life for the current and future residents of Huntington Beach.

Goal LU 2: Ensure that development is adequately served by transportation, infrastructure, utility infrastructure, and public services adequately serve development.

Goal LU 4: Achieve and maintain high quality architecture, landscape, and public open spaces in the City.

Goal LU 5: Ensure that significant environmental habitats and resources are maintained.

Goal LU 10: Achieve the development of a range of commercial uses.

Objective LU 10.1.3: Require the incorporation of facilities to promote the use of public transit, such as bus turnouts and drop-offs where appropriate.

Policy LU 10.1.4: Require that commercial buildings and sites be designed to achieve a high level of architectural and site layout quality.

Policy LU 10.1.5: Require that buildings, parking, and vehicular access be sited and designed to prevent adverse impacts on adjacent residential neighborhoods.

Policy LU 10.1.6: Require that commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible impacts of noise, light, vehicular traffic, visual character, and operational hazards.

Policy LU 10.1.11: Promote the introduction of a diversity of uses in general commercial centers, particularly those containing anchor grocery stores that improve their relationship with surrounding residential neighborhoods.

Policy LU 10.1.12: Require that Commercial General uses be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development including the consideration of:

- Incorporation of site landscape, particularly along street frontages and in parking lots;
- Linkage of buildings by common architectural design, landscape and pedestrian systems, to avoid the appearance of independent freestanding structures surrounded by parking;
- Siting and design of structures to facilitate and encourage pedestrian activity;
- Siting of one or more buildings in proximity to the street frontage to convey a visual relationship to the street and sidewalks;
- Architectural treatment of buildings to minimize visual bulk and mass, using techniques such as the modulation of building volumes and articulation of all elevations; and
- Inclusion of consistent signage designed and integrated into the building's architectural character.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 7.1.6: Accommodate the development of additional jobs-generating land uses that improve the 1992 jobs-to-housing ratio of 0.82 to 1.0 or greater; to meet objectives of the Regional Comprehensive Plan (Southern California Association of Governments) and Air Quality Management Plan. These should capitalize upon existing industrial strengths emphasizing the clustering of similar or complementary industries.

Policy LU 13.1.7: The type, intensity and density for reuse and/or development of surplus school sites shall be determined by the following:

- Compatibility with the type and character of adjacent uses; integration with adjacent commercial uses through the use of such amenities as common automobile access and reciprocal access agreements, consistent architectural treatment and pedestrian connections;
- The land use designations and policies for surrounding properties as defined by this plan;
- Formulation and approval of an appropriate site plan;
- Working with residents of surrounding neighborhoods in the formulation of a reuse plan; and
- The utilization of appropriate design features, such as, but not limited to:
  - The maintenance of active, usable open space for use by the surrounding neighborhood.
  - The provision of buffering, such as open space areas or landscaping between new development and existing development.
  - Compliance with the applicable Design and Development Standards specific in the City's General Plan.

The home improvement warehouse, restaurant use, and future potential development of retail, restaurant, and office uses represent development, which would support the needs and reflect market demand of City residents and visitors. The proposed development improves the project site, much of which is currently underutilized vacant school buildings, and provides additional destination uses that would attract and complement existing retail and restaurant uses along Beach Boulevard and Warner Avenue. In addition, the proposed project would help the City to achieve its goal of enhancing the community image of Huntington Beach through the design and construction of a high-quality, state-of-the-art development; impacts to the surrounding area are mitigated to the greatest extent possible, while still allowing for the market-driven commercial development.

The design of the project promotes development of commercial buildings that convey a unified, high-quality visual image and character that are intended to expand the existing commercial pattern along Beach Boulevard and Warner Avenue. The proposed project utilizes retail uses in accordance with the patterns and distribution of use and density within the Land Use Plan Map of the City of Huntington Beach General Plan. The City's Design Review Board has reviewed the proposed architecture, colors, and materials and recommends preliminary approval of the design concept.

The proposed project would develop a mix of commercial uses on parcels contiguous to similar uses in an established, urban area. Public services are currently available to the project site, as well as the surrounding parcels, and the project includes improvements to existing infrastructure to ensure adequate service after project implementation.

Development of the commercial retail and restaurant uses will generate jobs for the community without substantially increasing the need for housing as most employees will come from the local area rather than from a regional perspective. Future development in Area B1 may potentially result in the loss of nine legal non-conforming residential units, however, loss of the units does not result in a substantial impact to the overall housing stock and conditions of approval require relocation assistance to those residents of low or moderate income.

With the recommended conditions of approval the design of the project meets the objectives of the Urban Design Element. For example, reuse plans for the surplus school site account for the type and character of adjacent commercial and residential uses. Additionally, the recommended conditions of approval encourage integrated development between the school site and Beach Boulevard as noted in General Plan Subarea 6B. Also, the surrounding property owners and residents have participated in several workshops regarding the adequacy of environmental documentation. The primary user, Ocean View Little League will be relocated to a new site and the project incorporates adequate buffering between adjacent uses.

#### **B. Economic Development Element**

**Goal ED 1:** Provide economic opportunities for present and future Huntington Beach residents and businesses through employment and local fiscal stability.

**Goal ED 2:** Aggressively retain and enhance the existing commercial, industrial, and visitor-serving uses while attracting new uses to Huntington Beach.

Goal ED 3: Enhance Huntington Beach's economic development potential through strategic land use planning and sound urban design practices.

The proposed project promotes development in accordance with Huntington Beach's Economic Development Element, as a home improvement warehouse, restaurant, and future retail, dining, and office development will broaden and stabilize the City's economic base. New employment opportunities will be created both in the construction of the proposed development and in the long-term operations of the retail and restaurant establishments. Commercial development of this underutilized property will encourage future development to expand westerly to Beach Boulevard as noted in General Plan Subarea 6B. New construction at the former school site will likely spur rejuvenation of adjacent underutilized parcels in the future. State of the art, high-quality architecture and site design will enhance the long-term economic success of the proposed development and will further enhance Huntington Beach's economic prospects.

C. Circulation Element

Goal CE 1: Provide a balanced transportation system that supports the policies of the General Plan and facilitates the safe and efficient movement of people and goods throughout the City while providing a balance between economic development and the preservation of residential neighborhoods, and minimizing environmental impacts.

Goal CE 2: Provide a circulation system which supports existing, approved, and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

Policy CE 2.1.1: Maintain a city-wide level of service (LOS) not to exceed LOS "D" for intersections during the peak hours.

Policy CE 2.1.2: Maintain a city-wide level of service (LOS) not to exceed LOS "C" for daily traffic, with the exception of Pacific Coast Highway south of Brookhurst Street.

Policy CE 2.1.3: Identify and improve roadways and intersections that are approaching, or have reached, unacceptable levels of service.

Goal CE 4: Encourage and develop a transportation demand management (TDM) system to assist in mitigating traffic impacts and in maintaining a desired level of service on the circulation system.

Goal CE 5: Provide sufficient, well-designed, and convenient on- and off-street parking facilities throughout the City.

Goal CE 7: Maintain and enhance the visual quality and scenic views along designated corridors.

A traffic impact analysis has been completed by a traffic engineering firm to ensure a balanced transportation system that adequately mitigates the project's potential traffic impacts while still allowing for commercial development to be achieved. The developer will be required to contribute a fair-share payment toward traffic system improvements to mitigate the project's proportionate impacts to certain intersections and roadways. Through the recommended conditions of approval, the project will be required to incorporate alternative modes of transportation through implementation of the Transportation Demand

Management ordinance. Preferentially located carpool parking spaces have been demonstrated on the site plan and other amenities, such as, employee lockers and showers, carpool information programs, and bike racks will be included in the overall design of the home improvement warehouse to reduce vehicular trips to the site. The well-designed parking facilities include compact spaces around the perimeter of the site, access between both proposed parcels without reentering the public street system, reciprocal driveways between uses, parking lot tree wells, and perimeter landscaping to enhance the view of the parking area from the surrounding street system.

**CONDITIONS OF APPROVAL – TENTATIVE PARCEL MAP NO. 2002-125:**

1. The tentative parcel map for the subdivision of 17.4 acres into four general commercial lots, minimum 1.2 acres in size, with access to a public street either by direct frontage or irrevocable access agreement, received and dated September 5, 2003 shall be the approved layout, except the property line at the proposed main driveway shall be revised to include the proposed curb ramp areas.
2. The developer shall enter into a Special Utility Easement Agreement with the City of Huntington Beach, relieving the City of financial responsibility for replacing and restoring any enhanced surface treatment resulting from the City's operation, maintenance, repair and replacement of the public water system facilities and appurtenances within the water line easement. (PW)
3. Prior to issuance of a grading permit the following shall be completed:
  - a. A focused Acoustical Analysis shall be performed on Alternate Site Design B analyzing potential noise sources and recommending noise attenuation measures, if necessary, to ensure compliance with external noise levels as required by Chapter 8.40 of the Huntington Beach Municipal Code. The Acoustical Analysis shall be at the direction of the Planning Department and at the developer's expense.
  - b. The following shall be shown on the grading plan:
    - i) Final grades and elevations on the grading plan shall not vary by more than one foot from the grades and elevations as shown on the approved site plan. (PW)
    - ii) Existing mature trees that are to be removed must be replaced at a 2 for 1 ratio with a 36" box tree or palm equivalent (13'-14' of trunk height for Queen Palms and 8'-9' of brown trunk). Applicant shall provide a consulting arborist report on all the existing trees. Said report shall quantify, identify, size and analyze the health of the existing trees. The report shall also recommend how the existing trees that are to remain (if any) shall be protected and how far construction/grading shall be kept from the trunk. (PW)
4. Prior to issuance of building permits, the following conditions shall be completed:
  - a. The developer shall prepare preliminary improvement plans and construction cost estimates for the following off-site mitigation measures to provide the basis for the determining fair share cost contributions:
    - i. Heil/Beach – construction of second northbound and southbound left turn lanes; construction of a second westbound through lane (combination through/right) replacing the westbound right turn lane on the near side of the intersection (PW)
    - ii. Warner/Magnolia – construction of a second northbound left turn lane (PW)

- iii. Warner/Beach – construction of a northbound right turn lane (PW)
  - iv. Warner/Newland – construction of a southbound right turn lane (PW)
  - b. The developer shall contribute a fair share cost for each of the off-site traffic mitigation measures based on the cost allocations identified in the approved supplement to traffic impact study. Some or all of the fair share contribution for individual measures may be satisfied through the payment of the project traffic impact fee in accordance with the Fair Share Traffic Impact Fee ordinance. A precise determination of the amounts and methods of satisfying the requirement will be determined following completion of the preliminary cost estimates for the improvements. (PW)
5. The Departments of Planning, Public Works and Fire are responsible for compliance with all conditions of approval herein as noted after each condition. The Planning Director and Public Works Director shall be notified in writing if any changes to the parcel map are proposed as a result of the plan check process. Permits shall not be issued until the Planning Director and Public Works Director have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission's may be required pursuant to the HBZSO.

**CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 00-31:**

1. The site plan, floor plans and elevations received and dated September 5, 2003 shall be the conceptually approved layout with the following modifications:
- a. Elevations shall be revised for consistency with plans and elevations approved by the Design Review Board on July 25, 2002 and maintained in case file DRB No. 00-24 as Exhibit "A". In addition, DRB conditions of approval are as follows:
    - i. Landscaping adjacent to the Lowe's building shall be revised so that the proposed wainscoting is not completely covered by landscaping materials. Vines shall be provided in some select areas along the building frontage and final planting design shall be subject to approval of the City's Landscape Architect.
    - ii. The proposed tower at the customer loading/indoor lumber yard shall be revised to be architecturally weightier and more proportionate to the overall building size, particularly when viewed from the side angle. From the side view, the tower should be expanded and visually anchored at least one-half way back to the main building. Final design shall be subject to approval of Planning staff.
    - iii. The gray and blue tone color scheme shall be the recommended colors for the Lowe's structure. However, the colors on all materials shall be revised to provide more contrast. For example, the proposed dark colors shall be darker and the light colors shall be lighter. The final color scheme shall be subject to approval by Planning staff.
  - b. The delivery door on the west side of the proposed building shall be moved north on the wall such that delivery operations for lumber in that area do not impact apparatus access requirements.
  - c. The site plan shall be revised to indicate that outdoor merchandise sales events within the parking lot shall be limited to a maximum of eight events per calendar year. Seven

of the events shall be limited to a maximum 96-hour duration and duration of the eighth event (Christmas Tree sales) shall be in accordance with the Huntington Beach Zoning and Subdivision Ordinance Code requirements. Temporary use permits are not required for parking lot sales events. Consistent with this requirement, Lowe's shall submit a list of events and dates indicating the duration of events to the Planning Department on an annual basis.

- d. Elevations shall be revised to incorporate multiple roof planes and/or a variety of roof slopes to reduce the overall mass and bulk of the building and comply with the Urban Design Guidelines.
- e. Revise the site plan to incorporate decorative paving within the five foot sidewalk adjacent to the outdoor merchandise display at the building base.
- f. Revise the site plan to incorporate textured paving or banding to identify the outdoor display areas in a manner consistent with the project hardscape.
- g. Eliminate building materials, such as, sheetrock, roofing materials, bulk lumber, and bagged landscape items from the outdoor merchandise display areas adjacent to the wood trellis and the garden center.
- h. Revise the site plan to replace tubular fencing proposed on the north and east property lines with solid masonry block wall with decorative pilasters every 50 feet, except tubular fencing may remain between the Lowe's building and the north property line.
- i. Redesign the cart corrals to consist only of a small depression in the parking lot to contain the carts, a low curb, and a low profile "Cart Return" sign.
- j. Revise the site plan to relocate the majority of the cart return areas further north in the parking lot.
- k. Revise the sound wall along the westerly property line in a manner meeting the approval of the Planning Department.
- l. Revise the site plan to incorporate diamond shaped tree wells and decorative paving within the pedestrian link from Warner Avenue to Lowe's main entrance.
- m. Revise the rear (north) elevations to incorporate additional architectural design and treatment to minimize the flat, undifferentiated expanse of wall subject to approval of the Planning Department.
- n. Revise the site plan to depict compact parking stalls with a full paved 17 foot depth and no landscape overhang.
- o. Incorporate an electric vehicle charging station within the parking lot.
- p. Incorporate a Public Art element into the proposed project. Public Art shall include art that is:
  - i. Innovative, original, and of artistic excellence;
  - ii. Appropriate to the design of the project; and,

iii. Reflective of the community's cultural identity (ecology, history, or society)

- q. Landscaping plans shall include a budget for trees along the rear property line with minimal budget spent on ground cover in this area. The proposed tree species shall be subject approval by the City Landscape Architect and the project arborist. Landscaping plans shall also depict substantial ground cover or shrubs to be shall be planted in all planter areas without relying heavily on wood/bark chips for coverage. Potted plants with automatic irrigation shall be included across the building frontage and/or landscape planters should be planned in strategic areas along the building base. Landscaping plans shall be coordinated with lighting plans so that dense trees do not reduce the effectiveness of parking lot lights and do not create shadows on vehicles.
2. Construction vehicles will not be allowed to take access from Roubidoux Drive and B Street. All access shall be taken from Warner Avenue. (PW)
3. Prior to submittal for building permits, the applicant shall submit a copy of the revised site plan, floor plans and elevations pursuant to Condition No. 1 for review and approval and inclusion in the entitlement file to the Planning Department and submit 8 inch by 10 inch colored photographs of all colored renderings, elevations, materials sample board, and massing model to the Planning Department for inclusion in the entitlement file.
4. Prior to issuance of building permits, the following shall be completed:
- a. The final parcel map shall be recorded with the County of Orange. (PW)
- b. An "Acceptance of Conditions" form shall be properly executed by the applicant and an authorized representative of the owner of the property, recorded with County Recorder's Office, and returned to the Planning Department for inclusion in the entitlement file. Conditions of approval shall remain in effect in the recorded form in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
- c. The Public Art element shall be approved by the Design Review Board.
5. The structure(s) cannot be occupied, the final building permit(s) cannot be approved, and utilities cannot be released for commencement of use and issuance of a Certificate of Occupancy until compliance with all conditions of approval specified herein are accomplished and verified by the Planning Department.
6. The use shall comply with the following:
- a. Delivery hours shall be limited to Monday – Saturday from 7:00 AM to 8:00 PM and Sunday from 8:00 AM to 4:00 PM.
- b. Nighttime stocking shall be limited to interior store operations only and shall not include re-merchandising at the outdoor garden center, exterior lumber activities, customer pick-up, or seasonal merchandise display areas.
- c. Customer store hours shall be limited to Monday – Saturday from 6:00 AM to 10:00 PM and Sunday from 8:00 AM to 8:00 PM.



- d. Parking lot lights shall be automatically dimmed to minimal security level lighting one hour after closing.
  - e. The Lowe's Home Improvement Warehouse shall be designated as a single user with a maximum of 10% of the gross building floor area devoted to an ancillary retail tenant.
  - f. Any re-use of the site or request for future demising walls within the Lowe's Home Improvement Warehouse building shall require approval of a conditional use permit by the Planning Commission.
- 7. Future design and elevations of the restaurant pad and Parcel 3 shall be architecturally compatible to Lowe's Home Improvement Warehouse design and elevations including architectural details, colors, materials, and landscaping. The building design, colors, materials, and landscaping shall be subject to review and approval by the Design Review Board prior to issuance of grading permits for any pad site.
  - 8. Depending on the uses proposed, the restaurant pad and Parcel 3 may be subject to separate entitlement prior to issuance of grading permits for the pad site. Construction of the restaurant pad building shall not result in any loss of landscaping as shown on the September 5, 2003 site plan and a maximum 8,500 square foot building shall be constructed.
  - 9. This Conditional Use Permit No. 00-31 shall not become effective until Zoning Map Amendment No. 00-02 has been approved by the City Council and is in effect.
  - 10. The Mitigation Monitoring Program detailed in Volume IV, Response to Comments/Final Environmental Impact Report No. 00-01, Section VI, Table VI-1 shall be adhered to.

## Traffic Generation Review for Proposed 14,500 Retail/Commercial Substitution

### **EIR Traffic Study Analyzed Trip Generation (159,260 sf Lowes & 9,000 sf High Turnover Sit Down Restaurant)**

| <u>Daily</u> | <u>AM Peak Hour</u> | <u>PM Peak Hour</u> |
|--------------|---------------------|---------------------|
| 7,220        | 280                 | 565                 |

### **Current Proposal (157,043 sf Lowes as constructed & 14,500 retail/commercial)**

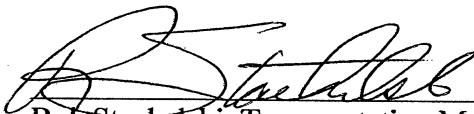
|            | <u>Daily</u> | <u>AM Peak Hour</u> | <u>PM Peak Hour</u> |
|------------|--------------|---------------------|---------------------|
| Lowes      | 5,911        | 201                 | 463                 |
| Retail *   | 2,062        | 38                  | 132                 |
| Total      | 7,973        | 239                 | 595                 |
| Net Change | +753         | -41                 | +30                 |

- \* Retail trip projection assumes 25% of retail traffic will be from a combination of pass-by trips and multi-purpose trips associated with Lowes resulting in a 25% decrease in net trip generation.

### **Analysis & Conclusions**

The proposed land use change for the project site is expected to result in trip increases in the afternoon peak traffic period and on a daily basis when compared to the 9,000 sf restaurant use analyzed in the original project traffic study. The original project traffic study included appropriate mitigation measures to reduce potential overall traffic impacts to a level of insignificance based on the assumed uses. The Lowes project was constructed at 157,043 sf – 2,257 sf less than assumed in the traffic study. The smaller building results in slightly lower trip generation for the Lowes portion of the project and serves to offset a portion of the increased trips that would result from the 14,500 sf retail site. In total, the projected trip generation for the overall site, including the proposed land use revision, would be expected to increase 753 trips on a daily basis (10% increase) and 30 trips during the afternoon peak hour (5% increase). A net reduction of 41 trips (14.6% reduction) is expected during the morning peak hour.

The expected trip generation that would result from the proposed land use change permitting a 14,500 sf retail/commercial building in place of the 9,000 sf restaurant pad would not result in significant increases in site generated traffic for the peak hours, both in terms of percentages and in actual street trips. Project mitigation was based solely on peak hour traffic generation making the increase in projected daily traffic insignificant. The trips generated would be consistent with analysis presented in the traffic study and would not be expected to generate the need for any additional mitigation measures for the project. These changes in trip generation would also not be significant enough to generate a need to change any traffic design features for project access (turn pocket lengths, driveway widths, etc.)

  
Bob Stachelski, Transportation Manager

3/5/07  
Date



## City of Huntington Beach Planning Department **STUDY SESSION REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, Director of Planning  
**BY:** Andrew Gonzales, Assistant Planner ~~A.G.~~  
**DATE:** April 10, 2007  
**SUBJECT:** **APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF TEMPORARY  
USE PERMIT NO. 07-01 (HUNTINGTON SURF & SPORT OUTDOOR SALES –  
126 MAIN STREET, UNIT 101)**

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### **PROJECT REQUEST AND SPECIAL CONSIDERATIONS**

This item represents an appeal filed by Planning Commissioner Shier-Burnett of the Zoning Administrator's approval of Temporary Use Permit (TUP) No. 07-01. TUP No. 07-01 represents a request for the following:

To permit temporary outdoor sales in conjunction with an existing retail establishment, on forty-nine (49) scheduled days per year for a period of five (5) years from 2007-2011.

The use is proposed on private property within the Downtown Specific Plan, near the southwest corner of Main Street and Walnut Avenue. The outdoor sales would occur on a paved area between the applicant's retail store and the public sidewalk. The applicant intends to display the merchandise on tables and racks within an approximately 239 square foot cordoned area. Sales events would correspond with the business hours of the retail establishment, on prescheduled days between April through December.

All sales transactions would occur inside the store. Customers intending to purchase merchandise displayed outdoors would carry it to the register located inside the store. A least one store employee would be stationed at the display area during the sales events to assist customers as necessary. At the conclusion of each scheduled event day, the tables, racks, and merchandise would be moved inside the store.

## **CURRENT LAND USE, HISTORY OF SITE, ZONING AND GENERAL PLAN DESIGNATIONS**

| <b>LOCATION</b>                                                                                                                                   | <b>GENERAL PLAN</b>                                                                                                  | <b>ZONING</b>                                              | <b>LAND USE</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-----------------|
| Subject Property, South of the Subject Property, West of the Subject Property (across Main Street), & East of the Subject Property (across Alley) | MV-F12-sp-pd (Mixed Use Vertical—3.0 max. Floor Area Ratio—35 du/ac max.—Specific Plan Overlay—Pedestrian Overlay)   | SP5-CZ<br>(Downtown Specific Plan-District 3-Coastal Zone) | Commercial      |
| North of Subject Property (across Walnut Avenue)                                                                                                  | MV-F6/25-sp-pd (Mixed Use Vertical—2.0 max. Floor Area Ratio—25 du/ac max.—Specific Plan Overlay—Pedestrian Overlay) | SP5-CZ<br>(Downtown Specific Plan-District 5-Coastal Zone) | Commercial      |

The following outlines the various formal actions taken by the City with respect to the subject site and similar temporary use permits granted for outdoor sales in the downtown area:

| <b>ENTITLEMENT</b>             | <b>LOCATION</b>                                                 | <b>REQUEST</b>                                                                                 | <b>ACTION</b>                                                                                          |
|--------------------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| Temporary Use Permit No. 05-01 | 126 Main Street, Unit 101 (Huntington Surf & Sport)             | Outdoor sales for forty-nine (49) days per year for a period of five (5) years from 2005-2009  | Approved for a period of two (2) years from 2005-2006 by the Zoning Administrator 4/20/05              |
| Temporary Use Permit No. 03-06 | 300 Pacific Coast Highway, Suite 104. (Huntington Surf & Sport) | Outdoor sales for forty-nine (49) days per year for a period of five (5) year from 2004-2008.  | Approved by the Zoning Administrator 2/11/04                                                           |
| Temporary Use Permit No. 03-05 | 101 Main Street (Jack's Board Shop)                             | Outdoor sales for forty-seven (47) days per year for a period of five (5) years from 2004-2008 | Approved by the Zoning Administrator 12/10/03                                                          |
| Temporary Use Permit No. 01-07 | 101 Main Street (Jack's Board Shop)                             | Outdoor sales for twenty-nine (29) days per year for five (5) years from 2002-2006             | Approved for a period of two (2) years from 2002-2003 by the Zoning Administrator 1/16/02              |
| Temporary Use Permit No. 01-03 | 126 Main Street, Unit 101 (Huntington Surf & Sport)             | Outdoor sales for twenty-two (22) days per year for a period of four (4) years from 2001-2004  | Approved by the Planning Commission on 7/10/01 based on an appeal of the Zoning Administrator's action |
| Temporary Use Permit No. 97-20 | 300 Pacific Coast Highway, Suite 104 (Huntington Surf & Sport)  | Outdoor sales for thirty-one (31) days for 1998.                                               | Approved by the Zoning Administrator 10/29/97                                                          |

## **APPLICATION PROCESS AND TIMELINES**

**DATE OF COMPLETE APPLICATION:**

Temporary Use Permit: February 8, 2007

**MANDATORY PROCESSING DATE(S):**

April 9, 2007

TUP No. 07-01 was filed on January 8, 2007, and deemed complete on February 8, 2007. The Zoning Administrator approved the request on February 28, 2007 in compliance with mandatory processing times. The appeal is tentatively scheduled for the Planning Commission meeting of April 24, 2007.

### **CEQA ANALYSIS/REVIEW**

The proposed project is determined not have any significant effect on the environment and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15304, Class 4 of the CEQA Guidelines, because the project consists of a minor temporary use of land having negligible or no permanent effects on the environment.

### **COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES**

The Departments of Economic Development, Public Works, Fire, Police, and Building and Safety have reviewed the proposed use. Recommended conditions have been incorporated into the Zoning Administrator's Notice of Action (Attachment No. 4).

### **PUBLIC MEETINGS, COMMENTS AND CONCERNS**

Temporary Use Permit No. 07-01 was scheduled before the Zoning Administrator on February 28, 2007. The applicant was present at the meeting. No one spoke in opposition to the aforementioned request. The Zoning Administrator presented that prior to the meeting she had received written communication regarding concerns about the busy corner and how the level of activity in this pedestrian environment may conflict with the request. The Zoning Administrator stated that the City has always found Huntington Surf & Sport to be a responsible operation and historically complaints have not been received, and reiterated that approved permits are always subject to revocation if problems arise or there are violations. The Zoning Administrator summarized that because what was being requested is consistent with the previous approval which had not resulted in any violations, the applicant may go forward with approval. Therefore, the Zoning Administrator approved Temporary Use Permit No. 07-01 with conditions as recommended by Planning staff.

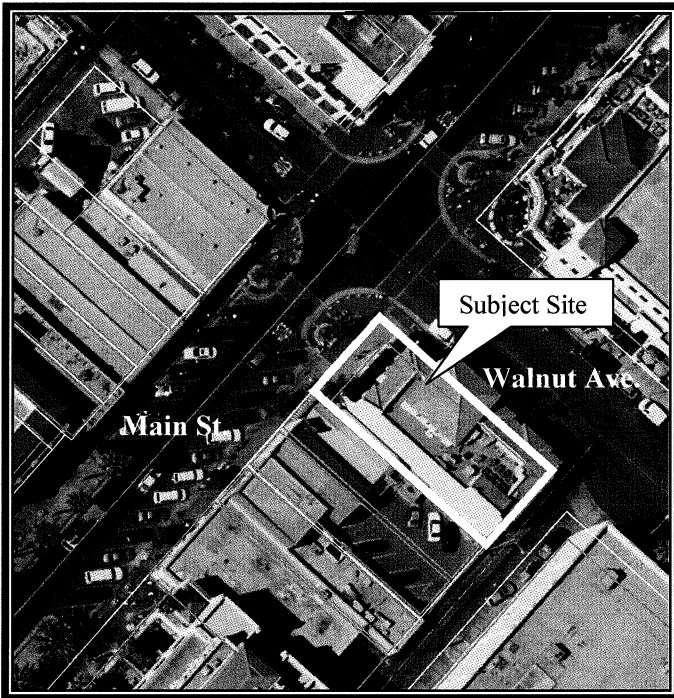
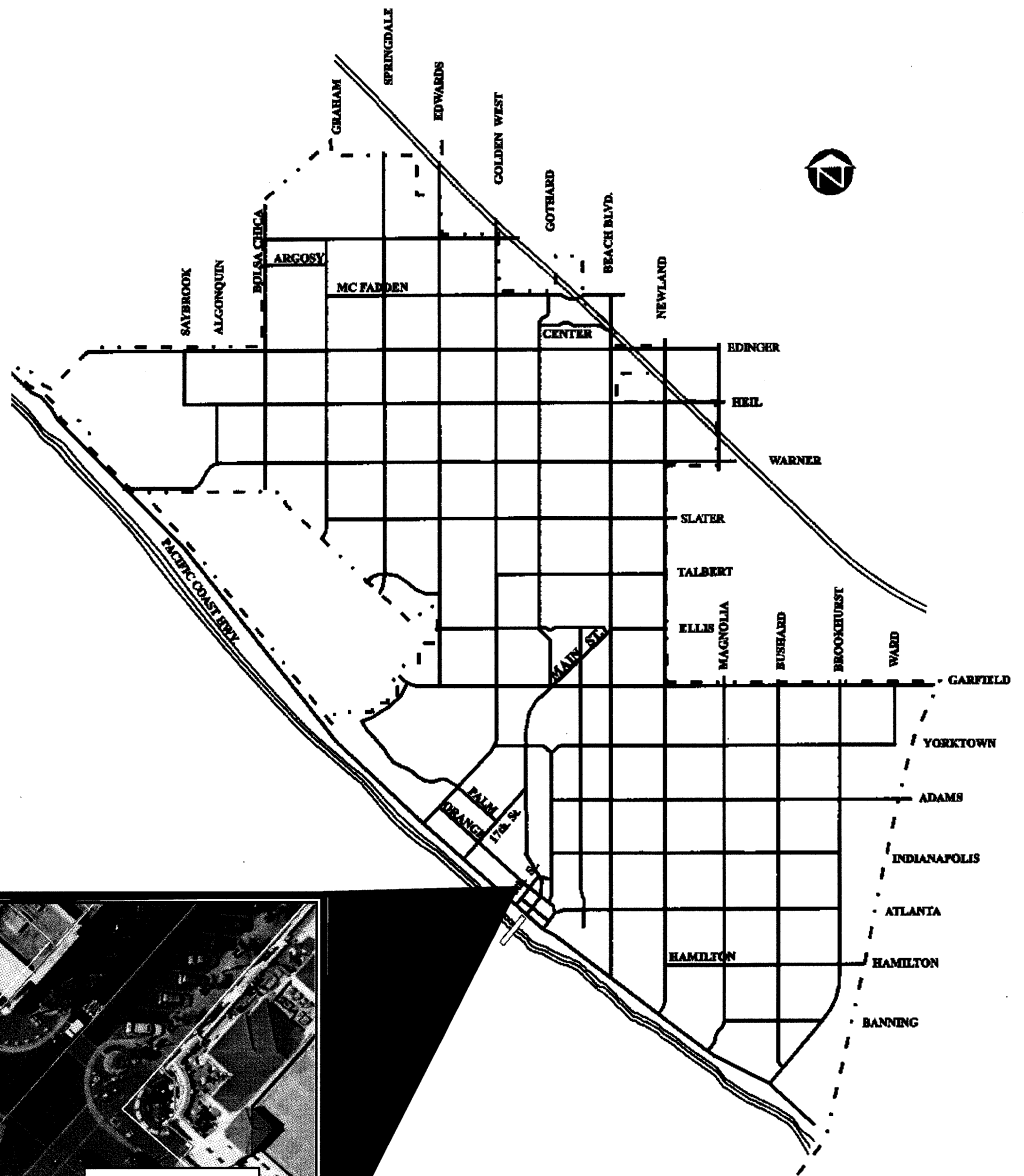
### **PLANNING ISSUES**

The primary issues for the Planning Commission to consider in conjunction with this temporary use permit request are compatibility and pedestrian circulation, as well as, the period of time granted for the project, inconsistency with similarly approved Temporary Use Permits in the downtown area, and aesthetic concerns with the outdoor sales events and the subject area which are identified in Planning Commissioner Shier-Burnett's appeal of the Zoning Administrator's action (Attachment No. 6).

### **ATTACHMENTS:**

1. Vicinity Map
2. Site plan dated March 2, 2007
3. Project narrative dated January 8, 2007
4. Zoning Administrator Notice of Action – TUP No. 07-01 dated March 1, 2007
5. Code Requirements Letter dated February 8, 2007
6. Planning Commissioner Shier-Burnett appeal letter dated March 1, 2007

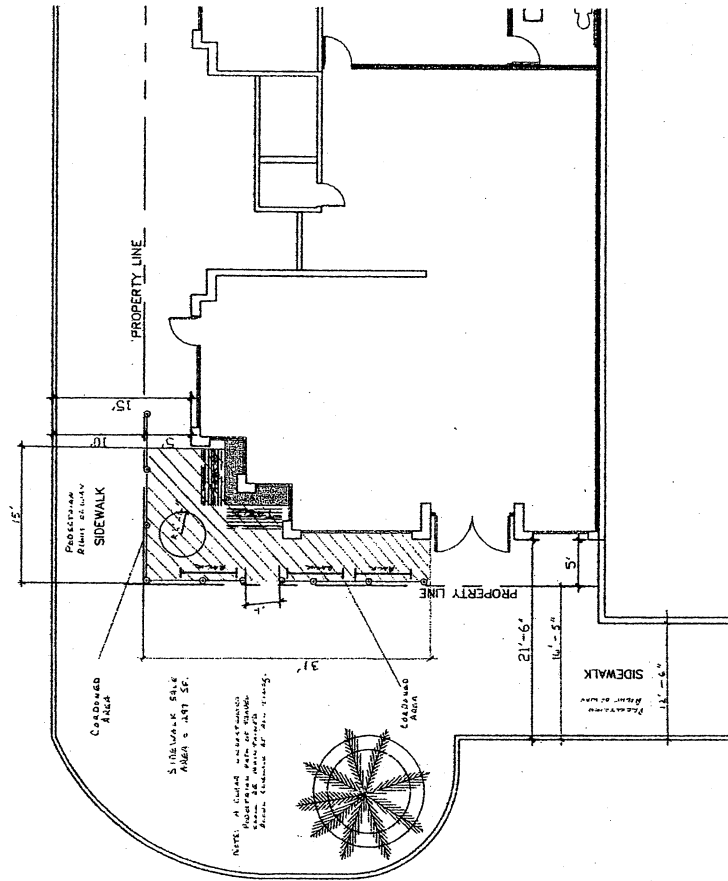
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**VICINITY MAP**  
**TEMPORARY USE PERMIT NO. 07-01**  
**(HUNTINGTON SURF& SPORT – 126 MAIN STREET, UNIT 101)**

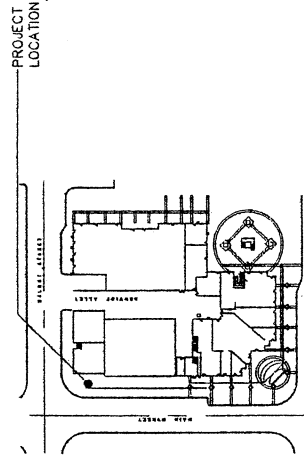
WALNUT STREET

MAIN STREET



FLOOR PLAN

SCALE: 1/8"=1'-0"



VICINITY MAP

SCALE: N.T.S.

NORTH

OWNER

MOHAMMED ZEIDAN  
301 17th STREET  
HUNTINGTON BEACH, CA 92648

APPLICANT

ARON PAI  
300 PACIFIC COAST HWY, SUITE 408  
HUNTINGTON BEACH, CA 92648

SIDEWALK PERMIT  
126 Main Street  
Huntington Beach, California  
A1

September 07 2008

ATTACHMENT NO. 2.1



January 8, 2007

Mary Beth Broeren  
Zoning Administrator  
2000 Main Street  
Huntington Beach, CA 92648

RE: Temporary Use Permit

Dear Mary Beth Broeren - Zoning Administrator,

HSS Girl's Surfshop, located at 126 Main Street, Huntington Beach would like to apply for a temporary use permit for outdoor sales. The sales will be held on approximately 49 days per year for a period of (5) years from 2007 – 2011. All cash register transactions are indoors and no cash registers located outside of the store. There are no tents or table coverings.

As you know, we coincide our Sidewalk Sale to special times of the year: Spring Break, Back to School and Holiday Season.

The actual square footage of the Sidewalk Sale space is 387 square feet. HSS would take the utmost care in properly presenting the City of Huntington Beach with a first class sidewalk sale, as we have done in the past.

Our proposed activities for the Sidewalk Sale dates would have approximately 2 employees and would be open from 8am to 9pm. All employees are under the direct supervision of our management. Our sidewalk sales allow us to employ more of the local youth in Huntington Beach for seasonal and part time work..

During our sidewalk sales we would be passing on bargains to our loyal customers in a pleasant environment. Many people look forward to our sidewalk sale each year. They have become somewhat of a tradition for our store and community. We make every effort to insure that we present an organized, neat and well-maintained area for the Sidewalk Sale.

Some of the surrounding uses of the HSS Girl's Surfshop are retail, restaurants and entertainment.

Please see the following page two for the proposed dates for upcoming years 2007 – 2011.

ATTACHMENT NO. 3.1

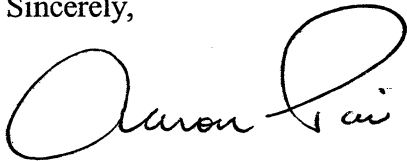


We are proposing to hold the Sidewalk Sale in front of our store on the following dates:

- 2007 April 6, 7, 13, 14, 20, 21  
 May 25, 26  
 June 8, 9, 15, 16  
 August 10, 11, 12, 17, 18, 19, 24, 25, 26, 31  
 September 1, 2, 3  
 November 23, 24, 25  
 December 1, 2, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31
- 2008 March 21, 22, 29, 30  
 July 19-27  
 August 8, 9, 10, 15, 16, 17, 22, 23, 24  
 September 5, 6, 7, 8  
 November 27, 28, 29  
 December 6, 7, 13, 14, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31
- 2009 April 10, 11, 18, 19  
 July 25 – Aug. 2  
 August 14, 15, 16, 21, 22, 23, 28, 29, 30  
 September 4, 5, 6, 7  
 November 26, 27, 28  
 December 5, 6, 12, 13, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31
- 2010 April 2, 3, 10, 11  
 July 24 – Aug. 1  
 August 13, 14, 15, 20, 21, 22, 27, 28, 29  
 September 3, 4, 5, 6  
 November 25, 26, 27  
 December 4, 5, 11, 12, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31
- 2011 April 22, 23, 30, May 1  
 July 23 – 31  
 August 12, 13, 14, 19, 20, 21, 26, 27, 28  
 September 2, 3, 4, 5  
 November 24, 25, 26  
 December 3, 4, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31

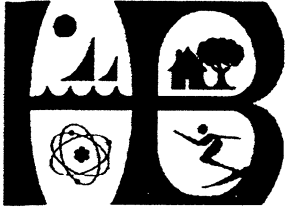
Mary Beth, it is our hope that we are granted permission to allow us the opportunity to maintain our retail sales and continue to serve our loyal base of customers in our community.

Sincerely,



Aaron Pai

P.S. Happy New Year!



**OFFICE of the ZONING ADMINISTRATOR  
CITY OF HUNTINGTON BEACH • CALIFORNIA**

~~~~~  
P.O. BOX 190

CALIFORNIA 92648

NOTICE OF ACTION

(714) 536-5271

March 1, 2007

Aaron Pai
300 Pacific Coast Highway, Unit 408,
Huntington Beach CA 92648

SUBJECT: TEMPORARY USE PERMIT NO. 2007-001 (HUNTINGTON
SURF & SPORT OUTDOOR SALES):

APPLICANT: Aaron Pai

REQUEST: To permit temporary outdoor sales on approximately forty-nine
(49) days per year for a period of five (5) years from 2007-
2011.

PROPERTY OWNER: Mohammed Zeidan
200 Main Street, Unit 103
Huntington Beach, CA 92648

LOCATION: 126 Main Street, Unit 101 (south-east corner of Main Street
and Walnut Avenue)

PROJECT PLANNER: Andrew Gonzales

DATE OF ACTION: February 28, 2007

On Wednesday, February 28, 2007, the Huntington Beach Zoning Administrator took
action on your application, and your application was **conditionally approved**. Attached
to this letter are the findings and conditions of approval.

Please be advised that the Zoning Administrator reviews the conceptual plan as a basic
request for entitlement of the use applied for and there may be additional requirements
prior to commencement of the project. It is recommended that you immediately pursue
completion of the conditions of approval and address all requirements of the Huntington
Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion
of your total application. The conceptual plan should not be construed as a precise plan,
reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the
action taken by the Zoning Administrator becomes final at the expiration of the appeal
period. A person desiring to appeal the decision shall file a written notice of appeal to

ATTACHMENT NO. 4.1

the Secretary of the Planning Commission within ten (10) calendar days of the date of the Zoning Administrator's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand Two Hundred Eighty-Seven Dollars (\$1287.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and One Thousand Five Hundred Sixty-Nine Dollars (\$1569.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is March 12, 2007.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless the use has been established.

Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact the project planner at (714) 374-1547, (email: agonzales@surfcity-hb.org), or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,



Mary Beth Broeren
Zoning Administrator

MBB:AG:jc
Attachment

c: Honorable Mayor and City Council
Chair and Planning Commission
Penelope Culbreth-Graft, City Administrator
Paul Emery, Deputy City Administrator
Scott Hess, Acting Director of Planning
Herb Fauland, Acting Planning Manager
Eric Engberg, Division Chief/Fire Marshal
Terri Elliott, Principal Civil Engineer
Gerald Caraig, Permit-Plan Check Manager
Mohammed Zeidan-Property Owner
Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

TEMPORARY USE PERMIT NO. 2007-001

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15304 of the CEQA Guidelines, because the project consists of a minor temporary use of land having negligible or no permanent effects on the environment.

FINDINGS FOR APPROVAL - TEMPORARY USE PERMIT NO. 2007-001:

1. The proposed temporary use will be located, operated and maintained in a manner consistent with the policies of the General Plan (Pedestrian Overlay District), Local Coastal Program and Downtown Specific Plan; and provisions of Chapter 241 of the Huntington Beach Zoning and Subdivision Ordinance, including the following policies:

LU 15.2.2: Require that uses in the Pedestrian overlay district be sited and designed to enhance and stimulate pedestrian activity along the sidewalks.

Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

LCP/DTSP: Main Street should be lively, active commercial district at the street level. The first floor or developments along Main Street should be commercial, with open-air establishments encouraged.

2. Approval of the application for the proposed temporary use will not be detrimental to property or improvements in the surrounding area or to the public health, safety or general welfare. Proposed sales events will occur adjacent to the applicant's storefront and will be sited to prevent interference with use of the surrounding area. The two (2) years utilized for the previous temporary use permit had resulted in no violations relative to inconsistencies with the associated conditions of approval. In addition the temporary use permit is conditioned to ensure that adequate public, disabled, and emergency access will be maintained.

CONDITIONS OF APPROVAL - TEMPORARY USE PERMIT NO. 2007-001:

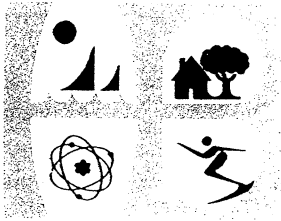
1. The site plan, floor plans, and elevations received and dated January 8, 2007, shall be the conceptually approved design.
2. Temporary Use Permit shall be valid for a maximum period of five years (2007-2011).

3. Prior (10 days minimum) to commencement of the use each year, a schedule (dates) for temporary sidewalk sales events to occur in that year (not to exceed 49 days), shall be submitted to the Planning Department.
4. The use shall comply with the following:
 - a. The temporary sales area shall be entirely confined to private property. Any encroachment into the public right-of-way shall be prohibited.
 - b. The sales area shall be cordoned off (i.e. roped off with a minimum 36" high barrier), nine feet from the building façade with intermittent openings every 10 to 15 feet for customer access.
 - c. Four-foot wide clearance shall be maintained along side the display racks within the "cordoned off" area between the sales racks and pedestrian pathway.
 - d. A ten-foot wide clear path of travel shall be maintained along the sidewalk. Required pathways for patron and disabled access shall be maintained clear of obstructions.
 - e. All required exists and access ways to the tenant space, as determined by the Building & Safety Department, shall be maintained clear and free of obstructions. The minimum required access width shall be 48 inches.
 - f. All overhead obstruction shall be a minimum of 80 inches above the walking surface.
 - g. All sales transactions shall occur inside the store.
 - h. Sales to patrons in vehicles or in the public right-of-way shall be prohibited.
 - i. Line formations within the public right-of-way shall be prohibited.
 - j. Sales events, including associated furniture, structures, patron lines, etc., shall not in any way interfere with access to any commercial establishment.
 - k. Furniture pieces shall weigh less than 35 pounds each.
 - l. All displays associated with sales events shall be maintained in an orderly condition.
 - m. Only the uses described in the narrative and the dates and times in the approved schedule(s), shall be permitted. Any proposed change to the approved schedule and dates shall be submitted to the Planning Director for review and approval a minimum of ten days in advance of the planned event date.
5. The site plan shall include the following items:
 - a. Square footage of the proposed sidewalk sale area.

- b. Indicate entire sidewalk sale area.
 - c. Dimension the pedestrian path of travel in the City right-of-way.
 - d. Indicate the pedestrian path of travel.
 - e. Indicate with a note that a clear unobstructed pedestrian path of travel shall be maintained along the sidewalk at all times.
 - f. Indicate the meaning of each symbol that appears on the site plan.
6. After an initial warning(s), the Code Enforcement Division reserves the right to cease operation of the temporary outdoor sales in the event that the use is in violation of the conditions of approval of Temporary Use permit 07-01.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

Phone 536-5271
Fax 374-1540

February 8, 2007

Aaron Pai
300 Pacific Coast Highway, Unit No. 408
Huntington Beach, CA 92648

**SUBJECT: TEMPORARY USE PERMIT NO. 2007-001 (126 MAIN STREET)
PROJECT IMPLEMENTATION CODE REQUIREMENTS**

Dear Mr. Pai,

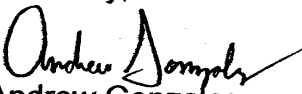
In order to assist you with your development proposal, staff has reviewed the project and identified applicable city policies, standard plans, and development and use requirements, excerpted from the City of Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes. This list is intended to help you through the permitting process and various stages of project implementation.

It should be noted that this requirement list is in addition to any "conditions of approval" adopted by the Zoning Administrator. Please note that if the design of your project or site conditions change, the list may also change.

The attached project implementation code requirements may be appealed to the Planning Commission as a matter separate from the associated entitlement(s) within ten calendar days of the approval of the project pursuant to the Huntington Beach Zoning and Subdivision Ordinance Section 248.24. The appeal fee is \$494.00.

If you would like a clarification of any of these requirements, an explanation of the Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes, or believe some of the items listed do not apply to your project, and/or you would like to discuss them in further detail, please contact me at 714-374-1547 or via email at agonzales@surfcity-hb.org and/or the respective source department (contact person below).

Sincerely,


Andrew Gonzales
Assistant Planner

Enclosure

cc: Gerald Caraig, Building and Safety Department – 714-374-1575
Lee Caldwell, Fire Department – 714-536-5531
Steve Bogart, Public Works – 714-536-1692
Herb Fauland, Acting Planning Manager
Jason Kelley, Planning Department
Mohammed Zeidan, 200 Main Street, Unit No. 103, Huntington Beach, CA 92648
Project File



CITY OF HUNTINGTON BEACH

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE: FEBRUARY 8, 2007
PROJECT NAME: HUNTINGTON SURF & SPORT OUTDOOR SALES
ENTITLEMENTS: TEMPORARY USE PERMIT NO. 07-01
PROJECT LOCATION: 126 MAIN STREET, HUNTINGTON BEACH
PLAN REVIEWER: ANDREW GONZALES, ASSISTANT PLANNER
TELEPHONE/E-MAIL: (714) 536-5271/ agonzales@surfcity-hb.org
PROJECT DESCRIPTION: TO PERMIT TEMPORARY OUTDOOR SALES ON FORTY-NINE (49) DAYS PER YEAR FOR A PERIOD OF FIVE (5) YEARS FROM 2007-2011.

The following is a list of code requirements deemed applicable to the proposed project based on plans received and dated January 8, 2007. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Zoning Administrator in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer.

TEMPORARY USE PERMIT NO. 07-01:


1. The site plan, floor plans, and elevations approved by the Zoning Administrator shall be the conceptually approved design.
2. The Development Services Departments (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the provisions of HBZSO Section 241.18.
3. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.
4. Temporary Use Permit No. 07-01 shall not become effective until the ten calendar day appeal period from the Zoning Administrator approval of the entitlements has elapsed.

5. Temporary Use Permit No. 07-01 shall become null and void unless exercised within one year of the date of final approval, or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning Department a minimum 30 days prior to the expiration date.
6. The Zoning Administrator reserves the right to revoke Temporary Use Permit No. 07-01 pursuant to a public hearing for revocation, if any violation of the conditions of approval, Huntington Beach Zoning and Subdivision Ordinance or Municipal Code occurs.
7. The project shall comply with all applicable requirements of the Municipal Code, Building & Safety Department and Fire Department, as well as applicable local, State and Federal Fire Codes, Ordinances, and standards, except as noted herein.
8. The applicant shall submit a check in the amount of \$50.00 for the posting of the Notice of Exemption at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Planning Department within two (2) days of the Zoning Administrator's action.
9. All landscaping shall be maintained in a neat and clean manner, and in conformance with the HBZSO. Prior to removing or replacing any landscaped areas, check with the Departments of Planning and Public Works for Code requirements. Substantial changes may require approval by the Zoning Administrator.
10. All permanent, temporary, or promotional signs shall conform to Chapter 233 of the HBZSO. Prior to installing any new signs, changing sign faces, or installing promotional signs, applicable permit(s) shall be obtained from the Planning Department. Violations of this ordinance requirement may result in permit revocation, recovery of code enforcement costs, and removal of installed signs.



CITY OF HUNTINGTON BEACH PLANNING COMMISSION COMMUNICATION

TO: Scott Hess, Planning Commission Secretary

FROM: Elizabeth Shier-Burnett, Planning Commissioner 

SUBJECT: APPEAL OF THE ZONING ADMINISTRATOR'S APPROVAL OF
TEMPORARY USE PERMIT NO. 07-01 (HUNTINGTON SURF &
SPORT OUTDOOR SALES)

DATE: MARCH 1, 2007

Temporary Use Permit No. 07-01 (Huntington Surf & Sport Outdoor Sales) was approved by the Zoning Administrator on March 1, 2007. The subject property is located at 126 Main Street, Unit 101. The request is to permit temporary outdoor sales on approximately forty-nine (49) days per year for a period of five (5) years from 2007-2011. I am hereby appealing the Zoning Administrator's action based upon the following reasons:

1. Concern pertaining to the five (5) year period granted for the subject project.
2. Inconsistency between approval of the subject request and adjoining businesses with similar requests.
3. Incompatibly with the aesthetics of the proposed outdoor sales events and the Downtown area.
4. Concern regarding the total number of days per year allowed for temporary outdoor sales.

c: City Council
Planning Commission
Penelope Culbreth-Graft, City Administrator
Andrew Gonzales, Assistant Planner

SH:RS:jc



City of Huntington Beach Planning Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, Director of Planning
BY: Rosemary Medel, Associate Planner *RM*
DATE: April 10, 2007

**SUBJECT: ZONING TEXT AMENDMENT NO. 06-08 (AMENDING CHAPTER 230.96
WIRELESS COMMUNICATION FACILITIES)**

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: Citywide

STATEMENT OF ISSUE:

- ♦ Zoning Text Amendment No. 06-08 request:
 - Amend Chapter 230 (Site Standards), Section 230.96 (Wireless Communication Facilities) of the Huntington Beach Zoning and Subdivision Ordinance to allow the City to exercise reasonable control over the time, place, and manner of installation of wireless facilities including those in the public right-of-way.
 - Establish a Wireless Permit Application process that encourages co-location and the undergrounding of wireless facilities.
- ♦ Staff's Recommendation: Approve Zoning Text Amendment No. 06-08 based upon the following:
 - The amendment will encourage and facilitate wireless facilities throughout the city while preventing visual clutter.
 - The introduction of the Wireless Permit will ensure that wireless facilities will not have adverse impacts citywide nor within the public right-of-way.
 - The amendment will require that when possible wireless facilities are located in the least obtrusive site necessary in order to continue wireless coverage in the area.

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 06-08 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2), including the legislative draft to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Zoning Text Amendment No. 06-08 with findings for denial.”
- B. “Continue Zoning Text Amendment No. 06-08 and direct staff accordingly.”

PROJECT PROPOSAL:

Zoning Text Amendment No. 06-08 represents a request to amend Section 230.96 (Wireless Communication Facilities) of the Huntington Beach Zoning and Subdivision Ordinance pursuant to Chapter 247 (Amendments). The proposed ordinance allows the City to exercise reasonable control over the time, place, and manner of installation of wireless facilities including those in the public right-of-way.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

Zoning Text Amendment (ZTA) No. 06-08 impacts all wireless facilities citywide regardless of location.

LOCATION	GENERAL PLAN	ZONING	LAND USE
Citywide	All Land Use Categories	All Zoning Categories	All Land Uses

General Plan Conformance:

The proposed Zoning Text Amendment No. 06-08 is consistent with the goals, policies, and objectives of the City’s General Plan as follows:

Utilities Element

Goal U 5: Maintain and expand service program to City of Huntington Beach residences and businesses.

Objective 5.1: Ensure that adequate natural gas, telecommunication and electrical systems are provided.

Policy U 5.1.1: Continue to work with service providers to maintain current levels of service and facilitate improved levels of service.

Policy U 5.1.3: Review requests for new utility facilities, relocations, or expansions to existing facilities.

Policy U 5.1.4: Require the review of new or expansions of existing industrial and utility facilities to ensure that such facilities will not visually impair the City’s coastal corridors and entry nodes.

The amended ordinance will encourage and facilitate wireless communication facilities where they are invisible to pedestrians, and co-located with other facilities.

Urban Design Guidelines Conformance: Not applicable.

Environmental Status: The proposed ZTA No. 06-08 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

Coastal Status: Not applicable.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements: The City Attorney's Office drafted the proposed ordinance to be current with state and federal law. The Department of Public Works reviewed the wireless facilities ordinance and determined that the encroachment permit process regulated by the Municipal Code will need to be amended by their department.

Public Notification:

A 1/8 page legal notice was published in the Huntington Beach/Fountain Valley Independent on March 29, 2007, and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix), as well as other interested parties. As of April 3, 2007 no communication supporting or opposing the request has been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION: **MANDATORY PROCESSING DATE(S):**

Not Applicable

Legislative Action – Not Applicable

Legislative actions are not subject to mandatory processing dates. However, ZTA No. 06-08 must be in effect prior to the expiration of the moratorium on March 19, 2008.

BACKGROUND:

In August 2006 the City Council adopted a moratorium on the installation of wireless telecommunication facilities in the public right-of-way. This moratorium was extended on September 18, 2006 for a six-month period. On March 5, 2007 the City Council extended the moratorium for one year through March 18, 2008 and adopted interim regulations to allow for the processing of permits notwithstanding the moratorium. On March 27, 2007 a study session was held with the Planning Commission to review and discuss the proposed amendment.

ANALYSIS:

With the adoption of the moratorium and the interim ordinance by the City Council, the City Attorney's Office was instructed to prepare updates to the Huntington Beach Zoning and Subdivision Ordinance that are consistent with current state and federal law.

The court recognized the right of municipalities to exercise reasonable control over the time, place and manner by which telephone corporations use the public right-of-way to install and operate their facilities. The Court of Appeals concluded that a wireless ordinance that employs a permitting process to regulate the place including location of the equipment and the manner or the appearance and characteristics of the premises in which wireless providers use the right-of-way was authorized by the California Public Utilities Code.

The intent of the proposed ordinance is to encourage and facilitate wireless communication facilities where they are invisible to pedestrians, co-located with other facilities or installed underground to reduce visual clutter. The proposed changes include the requirements for a Wireless Permit application and clarification of requirements for wireless facilities in the public right-of-way, and on public and private sites.

Through the submittal of a Wireless Permit Application, the applicant must demonstrate that the wireless communication facility is located in the least obtrusive location feasible so as to eliminate any gap in service. Additionally, the applicant must respond to various questions addressing compatibility with surrounding environment, screening or camouflage, massing and location, proportion and potential interference issues. With the Wireless Permit process, certain subsections or line items are either deleted or relocated within the permit process. The Planning Commission directed staff to illustrate the amendment in a table format. These changes are illustrated in Table 1.

TABLE 1: WIRELESS ORDINANCE AMENDMENT – SECTION 230.96

SUBSECTIONS-LEGISLATIVE DRAFT	AMENDMENTS
230.96 A	Modified or Added Language
230.96 B. 9, 10, 11	Language Relocated/Added Language
230.96 C	Modified or Added Language
230.96 D	New Process and Relocated Language
230.96 E. 1	Relocated Existing Language
230.96 E. 2	Modified or Added Language
230.96 E. 3	Relocated Existing Language
230.96 F. 9, 10, 11	Relocated Existing Language
230.96 F.12	Modified or Added Language
230.96 F.13	Modified or Added Language

The City Attorney's Office is also in the process of conferring with the Department of Public Works on proposed amendments to the encroachment permit process.

ATTACHMENTS:

1. Suggested Findings for Approval – ZTA No. 06-08
2. Draft Ordinance for ZTA No. 06-08
3. Legislative Draft for ZTA No. 06-08
4. Wireless Permit Application
5. City Council Report dated March 5, 2007

SH:LM:MBB:RR:RM

ATTACHMENT NO. 1

SUGGESTED FINDINGS FOR APPROVAL

ZONING TEXT AMENDMENT NO. 06-08

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act. The project is exempt because it involves minor amendments to Chapter 230 (Site Standards), Section 230.96 (Wireless Communication Facilities) to facilitate wireless communication facilities citywide and as they pertain to installation in the public right-of-way.

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 06-08:

1. Zoning Text Amendment No. 06-08 amends Chapter 230 (Site Standards), Section 230.96 (Wireless Communication Facilities) to encourage and facilitate wireless facilities throughout the city while preventing visual clutter by locating where they are invisible to pedestrians, such as underground or co-located with other facilities when possible in a manner consistent with the goals and policies of the General Plan.
2. In the case of the general land use provision, the change proposed is compatible with the uses authorized in, and the standards prescribed for in the zoning district for which it is proposed because the amendment to Chapter 230, Section 230.96 implements a Wireless Permit process where the applicant must demonstrate that the proposed installation will be compatible with the surrounding environment, will not adversely impact the public right-of-way, will be located in the least obtrusive site, is necessary to continue wireless coverage in the area, and that co-location is not feasible.
3. A community need is demonstrated for the proposed Zoning Text Amendment No. 06-08 because the City Council approved a 45-day moratorium in August 2006, extended the moratorium by six months in September 2006, and finally approved a one year extension in March 2007, to allow that City Attorney's Office time to draft an amendment to the Huntington Beach Zoning and Subdivision Ordinance that reflects City Council directive and is current with State and Federal law.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice because the amendment to Chapter 230, Section 230.96 will encourage and facilitate Wireless Communication Facilities where they are invisible to pedestrians, and co-located with other facilities or placed underground when possible through the Wireless Permit process.

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 230.96 OF THE HUNTINGTON BEACH ZONING
AND SUBDIVISION ORDINANCE TITLED
WIRELESS COMMUNICATIONS FACILITIES

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 230.96 Wireless Communications Facilities of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

230.96 Wireless Communication Facilities

- A. Purpose. The purpose of this Section is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their location, placement, construction, modification and design to protect the public safety, general welfare, and quality of life in the City of Huntington Beach.
- B. Definitions. For the purpose of this section, the following definitions for the following terms shall apply: (3568-9/02)
1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a wireless communication facility. (3568-9/02)
 2. Co-Location or Co-Located. The location of multiple antennas which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
 3. Completely Stealth Facility. Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards. (3568-9/02)
 4. Ground Mounted Facility. Any wireless antenna that is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02)
 5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
 6. Pre-existing Wireless Facility. Any wireless communication facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)

7. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
8. Stealth Facility or Techniques. Any wireless communication facility, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition of completely stealth facility. (3568-9/02)
9. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting but not traffic signals, recreational facility lighting or any other utility which meets the purpose and intent of this definition. (3568-9/02)
10. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02)
11. Wireless Communication Facility or Facility. An antenna structure and any appurtenant facilities or equipment that transmits electronic waves or is used for the transmission or receipt of signals that are used in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02)

C. Applicability. (3568-9/02)

1. All wireless communication facilities which are erected, located, or modified within the City of Huntington Beach shall comply with these regulations provided that: (3568-9/02)
 1. All facilities, for which permits were issued prior to the effective date of this section, shall be exempt from these regulations and guidelines. (3568-9/02)
 2. Any facility, which is subject to a previously approved and valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. (3568-9/02)
 3. Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC). (3568-9/02)
 4. Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)
 5. Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)

6. Any antenna structure that is designed to receive radio broadcast transmission.
(3568-9/02)
 7. Any antenna structure used by authorized amateur radio stations licensed by the FCC.
(3568-9/02)
- D. Wireless Permit Required. No wireless communication facility shall be installed anywhere in the City without submission of a Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following information:
1. Existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage.
 2. Compatibility with the surrounding environment or that the facilities are architecturally integrated into a structure.
 3. Screening or camouflaging by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).
 4. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts.
 5. No portion of a wireless communication facility shall project over property lines.
 6. Interference: To eliminate interference the following provisions shall be required for all wireless communication facilities regardless of size:
 - a. Prior to issuance of a building permit, the applicant must submit the following information to the Police Department for review:
 - i. All transmit and receive frequencies;
 - ii. Effective Radiated Power (ERP);
 - iii. Antenna height above ground, and
 - iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane).
 - b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated.
 - c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met.
 - d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity

on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified.

- e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.

E. Permit Required.

1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are:
 - a. Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or
 - b. Completely stealth facilities that comply with the base district height limit; or
 - c. Facilities in non-residential districts that are in compliance with the maximum building height permitted within the zoning district; and
 - i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or
 - ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
 - iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques.
2. Following submission of a Wireless Permit Application, a Conditional Use Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are:
 - a. Exceeding the maximum building height permitted within the zoning district; or
 - b. Visible from beyond the boundaries of the site at eye level (six feet); or
 - c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
 - d. Not designed to be architecturally compatible with surrounding buildings and land uses; or
3. As a condition of the Conditional Use Permit, the Zoning Administrator shall minimize significant adverse impacts to public visual resources by incorporating one or more of the following into project design and construction:
 - a. Stealth installations;
 - b. Co-location and locating facilities within existing building envelopes;
 - c. Minimizing visual prominence through colorization or landscaping;
 - d. Removal or replacement of facilities that become obsolete.

4. Design review shall be required for any wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with subsection 1.

F. Facility Standards: The following standards apply to all wireless communication facilities:

1. Aesthetics:

- a. Facility: All screening used in conjunction with a wall or roof mounted facility shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)
 - b. Equipment/Accessory Structures: All equipment associated with the operation of the facility, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. If chain link is used, then it must be vinyl coated and not include barbed wire. (3568-9/02)
 - c. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)
2. Building Codes: To ensure the structural integrity of wireless communication facilities, the owners of a facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)
 3. Conditions of Approval: Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title. (3568-9/02)
 4. Federal Requirements: All Wireless Communication Facilities must meet or exceed current standards and regulations of the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities. (3568-9/02)
 5. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02)
 6. Maintenance: All facilities and appurtenant equipment including landscaping shall be maintained to remain consistent with the original appearance of the facility. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02)
 7. Monitoring: For all wireless communication facilities, the applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. (3568-9/02)
 8. Signs: The facility shall not bear any signs or advertising devices other than certification, warning, or other required seals of signage. (3568-9/02)

9. Facilities on Public Property: Any wireless communication facility to be placed over, within, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit.
10. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required.
11. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way.
12. Facilities in the Public Right-of-Way. Any wireless communication facility to be placed over, within, on or beneath the public right-of-way shall comply with the following standards: (3568-9/02)
 - a. Any wireless communication facilities to be constructed on or beneath the public right-of-way must obtain an encroachment permit from the City and the applicant must provide documentation demonstrating that the applicant is a state-franchised telephone corporation exempt from local franchise requirements. (3568-9/02)
 - b. All equipment associated with the operation of a facility, including but not limited to cabinets, transmission cables but excepting antennas, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit. (3568-9/02)
 - c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time. (3568-9/02)
 - d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, administrative or conditional use permits, and all applicable fees. (3568-9/02)
 - e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program. (3568-9/02)
 - f. If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project.
 - g. The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communications facilities. Pending resolution of this legal

question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way.

13. Facility Removal.

- a. Wireless communication facilities affecting the public view and/or located in areas designated water Recreation, Conservation, Parks and Shoreline shall be removed within six (6) months of termination of use and the site restored to its natural state.
- b. Cessation of Operation: Within thirty (30) calendar days of cessation of operations of any wireless communication facility approved under this section, the operator shall notify the Planning Department in writing. The facility shall be deemed abandoned pursuant to the following sections unless: (3568-9/02)
 1. The City has determined that the operator has resumed operation of the wireless communication facility within six (6) months of the notice; or (3568-9/02)
 2. The City has received written notification of a transfer of wireless communication operators. (3568-9/02)
- c. Abandonment: A facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02)
- d. Removal of Abandoned Facility: The operator of the facility and the owner(s) of the property on which it is located, shall within thirty (30) calendar days after notice of abandonment is given either (1) remove the facility and restore the premises, or (2) provide the Planning Department with written objection to the City's determination of abandonment.

Any such objection shall include evidence that the facility was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02)
- e. Removal by City: At any time after thirty-one (31) calendar days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned facility and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the facility, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02)

SECTION 3. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2007.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

P. J. De... 3/30/07
City Attorney LM 3/30/07

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

City Administrator

Director of Planning

230.96 Wireless Communication Facilities

A. **Purpose.** The purpose of this Section is to encourage and facilitate wireless communications throughout the City, while preventing visual clutter by locating wireless communication facilities outside of residential zones and where they are invisible to pedestrians, and co-located with other facilities. All wireless communication facilities shall comply with these regulations with regard to their requirements and guidelines in order to regulate the location, placement, construction, modification and design to protect the of wireless facilities for the protection of public safety, general welfare, and quality of life in the City of Huntington Beach.

B. Permit Required.

1. ~~Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are: (3568-9/02)~~
 - a. ~~Co-located to approved facilities at existing heights or complies with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or (3568-9/02)~~
 - b. ~~Completely stealth facilities and complies with the base district height limit; or (3568-9/02)~~
 - c. ~~Facilities in non-residential districts and in compliance with the maximum building height permitted within the zoning district; and (3568-9/02)~~
- ~~2. Conditional use permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are: (3568-9/02)~~
 - ~~1. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or (3568-9/02)~~
 - ~~2. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or (3568-9/02)~~
 - ~~3. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques. (3568-9/02)~~
- ~~3. Design review shall be required for wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to~~
 - a. ~~Exceeding the maximum building height permitted within the zoning district; or (3568-9/02)~~
 - b. ~~Visible from beyond the boundaries of the site at eye level (six feet); or (3568-9/02)~~
 - c. ~~Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or (3568-9/02)~~
 - d. ~~Not designed to be architecturally compatible with surrounding buildings and land uses; or (3568-9/02)~~
 - e. ~~Facilities in residential districts that do not meet B.1.a or B.1.b. (3568-9/02)~~

specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with section B.1. (3568-9/02)

BC. Definitions. For the purpose of this section, the following definitions for the following terms shall apply: (3568-9/02)

1. Accessory Structure. Any structure or equipment that is to be located ancillary to an antenna or antennas in the establishment and operation of a wireless communication facility. (3568-9/02)
2. Co-Location or Co-Located. The location of multiple antennas which are either owned or operated by more than one service provider at a single location and mounted to a common supporting structure, wall or building. (3568-9/02)
3. Completely Stealth Facility. Any stealth facility that has been designed to completely screen all aspects of the facility including appurtenances and equipment from public view. Examples of completely stealth facilities may include, but are not limited to architecturally screened roof-mounted antennas, façade mounted antennas treated as architectural elements to blend with the existing building, flagpoles, church steeples, fire towers, and light standards. (3568-9/02)
4. Ground Mounted Facility. Any wireless antenna that ~~are~~ is affixed to a pole, tower or other freestanding structure that is specifically constructed for the purpose of supporting an antenna. (3568-9/02)
5. Microwave Communication. The transmission or reception of radio communication at frequencies of a microwave signal (generally, in the 3 GHz to 300 GHz frequency spectrum). (3568-9/02)
6. Pre-existing Wireless Facility. Any wireless communication facility for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance, including permitted facilities that have not yet been constructed so long as such approval is current and not expired. (3568-9/02)
7. Roof Mounted. Any wireless antenna directly attached or affixed to the roof of an existing building, water tank, tower or structure other than a telecommunications tower. (3568-9/02)
8. Stealth Facility or Techniques. Any wireless communication facility, which is designed to blend into the surrounding environment, typically, one that is architecturally integrated into a building or other concealing structure. See also definition of completely stealth facility. (3568-9/02)
9. Telecommunication Facility. ~~A wireless communication facility that is either wall mounted, utility mounted, or roof mounted.~~ (3568-9/02)
109. Utility Mounted. Any wireless antenna mounted to an existing above-ground structure specifically designed and originally installed to support utilities such as but not limited to electrical power lines, cable television lines, telephone lines, non-commercial wireless service antennas, radio antennas, street lighting **but not traffic signals**, recreational facility lighting, ~~traffic signal equipment~~ or any other utility which meets the purpose and intent of this definition. (3568-9/02)
110. Wall Mounted. Any wireless antenna mounted on any vertical or nearly vertical surface of a building or other existing structure that is not specifically constructed for the purpose of supporting an antenna (including the exterior walls of a building, an existing

parapet, the side of a water tank, the face of a church steeple, or the side of a freestanding sign) such that the highest point of the antenna structure is at an elevation equal to or lower than the highest point of the surface on which it is mounted. (3568-9/02)

- ~~12~~**11. Wireless Communication Facility or Facility.** An antenna structure and any appurtenant facilities or equipment that **transmits electronic waves or is** are used **for the transmission or receipt of signals that are used** in connection with the provision of wireless communication service, including, but not limited to digital, cellular and radio service. (3568-9/02)

CD. Applicability. (3568-9/02)

- ~~1.~~ All wireless communication facilities which are erected, located, or modified within the City of Huntington Beach ~~on or following the effective date of section 230.96~~ shall comply with these **regulations** guidelines, ~~subject to the categorical exemptions under subparagraph (3) of this section,~~ provided that: (3568-9/02)
 - ~~1. a.~~ All facilities, for which applications **permits** were **issued** ~~determined complete by the Planning Department~~ prior to the effective date of this section, shall be exempt from these regulations and guidelines. (3568-9/02)
 - ~~b.~~ ~~All facilities for which Building and Safety issued building permits prior to the effective date of section 230.96 shall be exempt from these regulations and guidelines, unless and until such time as subparagraph (2) of this section applies.~~
(3568-9/02)
 - ~~e~~**2.** Any facility, which is subject to a previously approved and valid conditional use permit, may be modified within the scope of the applicable permit without complying with these regulations and guidelines. (3568-9/02)
- ~~2.~~ ~~All facilities for which building permits and any extension thereof have expired shall comply with the provisions of section 230.96.~~ (3568-9/02)
- ~~3.~~ ~~The following uses shall be exempt from the provisions of section 230.96 until pertinent federal regulations are amended or eliminated. See Section 230.80 (Antennae) for additional requirements.~~ (3568-9/02)
- ~~A~~**3.** Any antenna structure that is one meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service for television purposes, as defined by Section 207 of the Telecommunication Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the Federal Communications Commission (FCC). (3568-9/02)
- ~~B~~**4.** Any antenna structure that is two meters (78.74 inches) or less in diameter located in commercial or industrial zones and is designed to transmit or receive radio communication by satellite antenna. (3568-9/02)
- ~~C~~**5.** Any antenna structure that is one meter (39.37 inches) or less in diameter or diagonal measurement and is designed to receive Multipoint Distribution Service, provided that no part of the antenna structure extends more than five (5) feet above the principle building on the same lot. (3568-9/02)
- ~~D~~**6.** Any antenna structure that is designed to receive radio broadcast transmission.
(3568-9/02)

£7. Any antenna structure used by authorized amateur radio stations licensed by the FCC.
(3568-9/02)

D. Wireless Permit Required. No wireless communication facility shall be installed anywhere in the City without submission of a Wireless Permit Application that demonstrates that the antenna is located in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following information:

1. Existing gaps in coverage, and the radius of area from which an antenna may be located to eliminate the gap in coverage.
2. Compatibility with the surrounding environment or that the facilities are architecturally integrated into a structure.
3. Screening or camouflaging by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet).
4. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts.
5. No portion of a wireless communication facility shall project over property lines.
6. **Interference:** To eliminate interference the following provisions shall be required for all wireless communication facilities regardless of size:
 - a. Prior to issuance of a building permit, the applicant must submit the following information to the Police Department for review:
 - i. All transmit and receive frequencies;
 - ii. Effective Radiated Power (ERP);
 - iii. Antenna height above ground, and
 - iv. Antenna pattern, both horizontal and vertical (E Plane and H Plane).
 - b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated.
 - c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every

proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met.

- d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified.

e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.

E. Permit Required.

1. Administrative approval by the Director may be granted for proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof, or utility mounted) that are:
 - a. Co-located with approved facilities at existing heights or that comply with the base district height limit for modified facilities, and compatible with surrounding buildings and land uses by incorporating stealth techniques; or
 - b. Completely stealth facilities that comply with the base district height limit; or
 - c. Facilities in non-residential districts that are in compliance with the maximum building height permitted within the zoning district; and
 - i. Screened from view and not visible from beyond the boundaries of the site at eye level (six feet); or
 - ii. Substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
 - iii. Designed to be architecturally compatible with surrounding buildings and land uses by incorporating stealth techniques.
2. Following submission of a Wireless Permit Application, a Conditional ~~u~~Use ~~p~~Permit approval by the Zoning Administrator shall be required for all proposed wireless communication facilities (including but not limited to ground mounted, co-located, wall, roof or utility mounted) that are:
 - a. Exceeding the maximum building height permitted within the zoning district; or
 - b. Visible from beyond the boundaries of the site at eye level (six feet); or
 - c. Not substantially integrated with the architecture of the existing building or structure to which it is to be mounted; or
 - d. Not designed to be architecturally compatible with surrounding buildings and land uses; or
 - e. ~~Facilities in residential districts that do not meet B.1.a or B.1.b.~~

3. As a condition of the Conditional Use Permit, the Zoning Administrator shall minimize significant adverse impacts to public visual resources by incorporating one or more of the following into project design and construction:

- a. Stealth installations;
- b. Co-location and locating facilities within existing building envelopes;
- c. Minimizing visual prominence through colorization or landscaping;
- d. Removal or replacement of facilities that become obsolete.

34. Design review shall be required for any wireless communication facilities located in redevelopment areas, on public right-of-ways, in OS-PR and PS zones, in areas subject to specific plans, on or within 300 feet of a residential district, and in areas designated by the City Council. Design review is not required for wireless communication facilities that comply with subsection 1.

EF. Facility Standards:- The following standards apply to all wireless communication facilities:

1. Aesthetics:

- a. Facility: All screening used in conjunction with a wall or roof mounted facility shall be compatible with the architecture of the building or other structure to which it is mounted, including color, texture and materials. All ground mounted facilities shall be designed to blend into the surrounding environment, or architecturally integrated into a building or other concealing structure. (3568-9/02)
- b. Equipment/Accessory Structures: All equipment associated with the operation of the facility, including but not limited to transmission cables, shall be screened in a manner that complies with the development standards of the zoning district in which such equipment is located. Screening materials and support structures housing equipment shall be architecturally compatible with surrounding structures by duplicating materials and design in a manner as practical as possible. If chain link is used, then it must be vinyl coated and not include barbed wire. (3568-9/02)
- c. General Provisions: All Wireless Communication Facilities shall comply with the Huntington Beach Urban Design Guidelines. (3568-9/02)

2. Building Codes: To ensure the structural integrity of wireless communication facilities, the owners of a facility shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for facilities that are published by the Electronic Industries Association, as amended from time to time. (3568-9/02)

3. Conditions of Approval: Acceptance of conditions by the applicant and property owner shall be ensured by recordation of the conditions on the property title. (3568-9/02)

4. Federal Requirements: All Wireless Communication Facilities must meet or exceed current standards and regulations of the FCC, and any other agency of the state or federal government with the authority to regulate wireless communication facilities. (3568-9/02)

5. Interference: ~~To eliminate interference the following provisions shall be required for all wireless communication facilities regardless of size:~~ (3568-9/02)

- ~~_____ a. Prior to issuance of a building permit, the applicant must submit the following information to the Police Department for review: (3568-9/02)~~
 - ~~_____ 1. All transmit and receive frequencies; (3568-9/02)~~
 - ~~_____ 2. Effective Radiated Power (ERP); (3568-9/02)~~
 - ~~_____ 3. Antenna height above ground, and (3568-9/02)~~
 - ~~_____ 4. Antenna pattern, both horizontal and vertical (E Plane and H Plane). (3568-9/02)~~
- ~~_____ b. At all times, other than during the 24-hour cure period, the applicant shall comply with all FCC standards and regulations regarding interference and the assignment of the use of the radio-frequency spectrum. The applicant shall not prevent the City of Huntington Beach or the countywide system from having adequate spectrum capacity on the City's 800 MHz voice and data radio-frequency systems. The applicant shall cease operation of any facility causing interference with the City's facilities immediately upon the expiration of the 24-hour cure period until the cause of the interference is eliminated. (3568-9/02)~~
- ~~_____ c. Before activating its facility, the applicant shall submit to the Police and Fire Departments a post-installation test to confirm that the facility does not interfere with the City of Huntington Beach Public Safety radio equipment. The Communications Division of the Orange County Sheriff's Department or Division-approved contractor at the expense of the applicant shall conduct this test. This post-installation testing process shall be repeated for every proposed frequency addition and/or change to confirm the intent of the "frequency planning" process has been met. (3568-9/02)~~
- ~~_____ d. The applicant shall provide to the Planning Department a single point of contact (including name and telephone number) in its Engineering and Maintenance Departments to whom all interference problems may be reported to insure continuity on all interference issues. The contact person shall resolve all interference complaints within 24 hours of being notified. (3568-9/02)~~
- ~~_____ e. The applicant shall insure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply. (3568-9/02)~~

65. Lighting: All outside lighting shall be directed to prevent "spillage" onto adjacent properties, unless required by the FAA or other applicable authority, and shall be shown on the site plan and elevations. (3568-9/02)

76. Maintenance: All facilities and appurtenant equipment **including landscaping** shall be maintained to remain consistent with the original appearance of the facility. Ground mounted facilities shall be covered with anti-graffiti coating. (3568-9/02)

87. Monitoring: For all wireless communication facilities, the applicant shall provide a copy of the lease agreement between the property owner and the applicant prior to the issuance of a building permit. (3568-9/02)

98. Signs: The facility shall not bear any signs or advertising devices other than certification, warning, or other required seals of signage. (3568-9/02)

9. **Facilities on Public Property**: Any wireless communication facility to be placed over, within, or beneath City property shall obtain a lease or franchise from the City prior to applying for a Wireless Permit and an administrative or conditional use permit.

10. **Landscaping**: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected

vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required.

- 11. Utility Agreement:** If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right-of-way, or a written statement from the utility company that will be supplying the power or other services, that they accept all responsibility for those lines in the public right-of-way.

~~F. Site Selection.~~ For all wireless communication facilities, the applicant shall provide documentation that demonstrates the following: (3568-9/02)

- ~~1. Compatibility with the surrounding environment or architecturally integrated into a structure. (3568-9/02)~~
- ~~2. Screened or camouflaged by existing or proposed topography, vegetation, buildings or other structures as measured from beyond the boundaries of the site at eye level (six feet). (3568-9/02)~~
- ~~3. Massing and location of the proposed facility are consistent with surrounding structures and zoning districts. (3568-9/02)~~
- ~~4. No portion of a wireless communication facility shall project over property lines. (3568-9/02)~~
- ~~5. Significant adverse impacts to public visual resources shall be minimized by incorporating one or more of the following into project design and construction: (Res No. 2004-80-9/04)~~
 - ~~a. Co-locating antennas on one structure; (Res No. 2004-80-9/04)~~
 - ~~b. Stealth installations; (Res No. 2004-80-9/04)~~
 - ~~c. Locating facilities within existing building envelopes; (Res No. 2004-80-9/04)~~
 - ~~d. Minimizing visual prominence through colorization or landscaping; (Res No. 2004-80-9/04)~~
 - ~~e. Removal of facilities that become obsolete. (Res. No. 2004-80-9/04)~~
- ~~6. Wireless communication facilities affecting the public viewshed and/or located in areas designated water Recreation, Conservation, Parks and Shoreline shall be removed within six (6) months of termination of use and the site restored to its natural state. (Res No. 2004-80-9/04)~~

G12. Facilities in the Public Right-of-Way. Any wireless communication facility to be placed over, **within**, on or beneath the public right-of-way shall comply with the following standards: (3568-9/02)

- ~~1a.~~ Any wireless communication facilities to be constructed on or beneath the public right-of-way must have a franchise agreement with **obtain an encroachment permit from** the City or the owner that has a wireless franchise agreement with the City, or **and** the applicant must provide documentation demonstrating that the applicant is a state-franchised telephone corporation exempt from local franchise requirements. (3568-9/02)

- 2b. All equipment associated with the operation of a facility, including but not limited to **cabinets**, transmission cables **but excepting antennas**, shall be placed underground in those portions of the street, sidewalks and public rights-of-way where cable television, telephone or electric lines are underground. At no time shall equipment be placed underground without appropriate conduit. (3568-9/02)
- 3c. The City Engineer shall approve the location and method of construction of all facilities located within public rights-of-way **and the installation of facilities within the public rights-of-way must comply with Title 12 of the Huntington Beach Municipal Code, as the same may be amended from time to time.** (3568-9/02)
- 4d. All wireless communication facilities shall be subject to applicable City permit and inspection fees, including, but not limited to, those pertaining to encroachment permits, **administrative or conditional use permits**, and all applicable fees. (3568-9/02)
- 5e. Any wireless communication facility installed, used or maintained within the public rights-of-way shall be removed or relocated when made necessary by any "project." For purposes of this section, project shall mean any lawful change of grade, alignment or width of any public right-of-way, including but not limited to, the construction of any subway or viaduct that the City may initiate either through itself, or any redevelopment agency, community facility district, assessment district, area of benefit, reimbursement agreement or generally applicable impact fee program. (3568-9/02)
- 6f. ~~Wireless communication facilities may be installed on existing utility poles, conduits and other facilities of a public utility, with the approval of the City Engineer, provided a franchise agreement exists allowing wireless installation. (3568-9/02)~~ **If the facility is attached to a utility pole, the facility shall be removed, at no cost to the City, if the utility pole is removed pursuant to an undergrounding project.**
- 7g. ~~Prior to the approval of any required building permits or entitlements (Conditional Use Permits, Variances, etc.) the applicant shall have a franchise agreement approved by the City Council. (3568-9/02)~~ **The service provider shall enter into a franchise agreement with the City. As of March 17, 2007, the California Supreme Court, in the case entitled Spring Telephony PCS v. County of San Diego, will determine whether California Public Utilities Code § 7901 grants a state-wide franchise to use the public rights-of-way for the purpose of installation of wireless communications facilities. Pending resolution of this legal question, any applicant seeking to use the public right-of-way must enter into a City franchise to install wireless communications facilities. The franchise shall provide that the franchise fee payments shall be refunded to the applicant and the franchise become null and void if and when the California Supreme Court establishes that the provider has a state-wide franchise to install a wireless communications facility in the public right-of-way.**
- H. ~~Facilities on Public Property. Any wireless communication facility to be placed over, on or beneath public property shall comply with the following standards: (3568-9/02)~~
- ~~1. Wireless communication facilities shall be installed in accordance with all applicable City codes and ordinances, including, but not limited to, standards for paving in the event that any undergrounding of utilities is required. (3568-9/02)~~
 - ~~2. Any wireless communication facilities to be constructed on or beneath public property must have a lease agreement with the city. (3568-9/02)~~
- I. ~~Additional Requirements.~~

- ~~1. Landscaping: Landscape planting, irrigation and hardscape improvements may be imposed depending on the location, the projected vehicular traffic, the impact on existing facilities and landscape areas, and the visibility of the proposed facility. Submittal of complete landscape and architectural plans for review and approval by the Directors of Public Works and Planning may be required. Public Works inspectors may require additional improvements during installation based on facility impacts. (3568-9/02)~~
- ~~2. Utility Agreement: If the proposed facility will require electrical power or any other utility services to the site, the applicant will be required to furnish the City's Real Estate Services Manager, either a drafted utility franchise agreement between the City of Huntington Beach and the applicant to place those lines in the public right of way, or a written statement from the utility company who will be supplying the power or other services, that they accept all responsibility for those lines in the public right of way. (3568-9/02)~~

H13. Facility Removal.

- a. Wireless communication facilities affecting the public view and/or located in areas designated water Recreation, Conservation, Parks and Shoreline shall be removed within six (6) months of termination of use and the site restored to its natural state.**
- 1b. Cessation of Operation:** Within thirty (30) **calendar** days of cessation of operations of any wireless communication facility approved under this section, the operator shall notify the Planning Department in writing. The facility shall be deemed abandoned pursuant to the following sections unless: (3568-9/02)
 - A1.** The City has determined that the operator has resumed operation of the wireless communication facility within six (6) months of the notice; or (3568-9/02)
 - B2.** The City has received written notification of a transfer of wireless communication operators. (3568-9/02)
- 2c. Abandonment:** A facility that is inoperative or unused for a period of six (6) continuous months shall be deemed abandoned. Written notice of the City's determination of abandonment shall be provided to the operator of the facility and the owner(s) of the premises upon which the facility is located. Such notice may be delivered in person, or mailed to the address(es) stated on the facility permit application, and shall be deemed abandoned at the time delivered or placed in the mail. (3568-9/02)
- 3d. Removal of Abandoned Facility:** The operator of the facility and the owner(s) of the property on which it is located, shall within thirty (30) **calendar** days after notice of abandonment is given either (1) remove the facility and restore the premises, or (2) provide the Planning Department with written objection to the City's determination of abandonment.

Any such objection shall include evidence that the facility was in use during the relevant six- (6) month period and that it is presently operational. The Director shall review all evidence, determine whether or not the facility was properly deemed abandoned, and provide the operator notice of its determination. (3568-9/02)
- 4e. Removal by City:** At any time after thirty-one (31) **calendar** days following the notice of abandonment, or immediately following a notice of determination by the Director, if applicable, the City may remove the abandoned facility and/or repair any and all damage to the premises as necessary to be in compliance with applicable codes. The City may, but shall not be required to, store the removed facility (or any part thereof). The owner of the premises upon which the abandoned facility was located, and all prior operators of the

facility, shall be jointly liable for the entire cost of such removal, repair, restoration and/or storage, and shall remit payment to the City promptly after demand thereof is made. The City may, in lieu of storing the removed facility, convert it to the City's use, sell it, or dispose of it in any manner deemed appropriate by the City. (3568-9/02)

**CITY OF HUNTINGTON BEACH
WIRELESS PERMIT APPLICATION FORM**

This form is designed to elicit required technical information in support of an application for a new or modified permit (generally, the "Permit") for a wireless site within the City of Huntington Beach.

This application is a mandatory element of the application process. No application for a new wireless site Permit or for a modification of an existing wireless site Permit shall be considered for determination of completeness until this form and required attachments are provided to the City of Huntington Beach.

Every page of this form, including this page, must be completed and submitted to the City of Huntington Beach, and each page must be signed and/or initialed where indicated.

Questions about this form or the required information to be provided should be directed to the City Planner assigned to your project or to the Director of Planning at (714) 536-5271 for the City of Huntington Beach.

You are advised to be familiar with the City's Municipal Code and Zoning and Subdivision Ordinance, which establishes standards and guidelines for the installation of wireless communications facilities in the City of Huntington Beach.

<Continue to next page>

1.00: **Applicant Information**

- 1.01: Project Address: _____
- 1.02: Project Assessors Parcel
Number: _____
- 1.03: Name of Applicant: _____
- 1.04: Name of Property Owner: _____
- 1.05: Applicant is: ☐ Owner ☐ Owner's representative ☐
Other
- 1.06: Applicant's Address Line 1: _____
- 1.07: Applicant's Address Line 2: _____
- 1.08: Applicant's Address Line 3: _____
- 1.09: Applicants Address Line 4: _____
- 1.10: Applicant's Phone number: _____
- 1.11: Applicant's Mobile number: _____
- 1.12: Applicant's Fax number: _____
- 1.13: Applicant's Email address: _____

If Applicant is the Property Owner and the name and contact information above is the same, initial here _____ and proceed to 3.01.

<Continue to next page>

2.00: Project Owner Information

2.01: Disclose the Names, Addresses, contact persons, and telephone numbers for all Project Owners (use additional sheets if required and mark as "Attachment 2.01"):

2.02: Project Owner Name (i.e., carrier or licensee): _____

2.03: Address (line 1): _____

2.04: Address (line 2): _____

2.05: City: _____ State: _____ Zip: _____

2.06: Contact Person Name: _____

2.07: Contact Person's telephone number/extension: _____

2.08: If the Applicant is not the project owner, attach a letter of agency appointing the Applicant as representative of the Project Owner(s) in connection with this application. Designate the letter of agency as "Attachment 2.08".

Initial here _____ if Attachment 2.08 is attached to this application, and continue to 3.00.

2.09: If the Applicant is not the property owner, attach a letter of agency appointing the Applicant as representative of the Property Owner in connection with this application. Designate the letter of agency as "Attachment 2.09".

Initial here _____ if Attachment 2.09 is attached to this application, and continue to 3.00.

<Continue to next page>

3.00: Project Purpose

3.01: Justification. Provide a non-technical narrative, accompanied by written documentation where appropriate, which explains the purpose(s) of the proposed Project.

3.02: Indicate whether the dominant purpose of the Project is to add additional network capacity, to increase existing signal level, or to provide new radio frequency coverage (check only one).

☐ Add network capacity without adding significant new RF coverage area

☐ Increase the existing RF signal level in an existing coverage area

☐ Provide new radio frequency coverage in a significant area not already served by existing radio frequency coverage by the same Owner or affiliated entity (such as a roaming agreement with an affiliated entity for a cellular or PCS carrier).

☐ Other

3.03 If the answer in 4.02 is not "Other" proceed to 5.00.

3.04 Attach a statement fully and expansively describing the "Other" dominant purpose of this project. Designate this attachment, "Attachment 4.04".

Initial here _____ to indicate that Attachment 4.04 is attached to this application.

<Continue to next page>

4.00: **Radio Frequency Coverage Maps**

- 4.01: Where a licensee intends to provide radio frequency geographic coverage to a defined area from the Project (including applicants in the cellular, PCS, broadcast, ESMR/SMR categories), the coverage maps and information requested below are required attachments. All others proceed to 7.00.

For the coverage maps required here, the following mandatory requirements apply:

1. The size of each submitted map must be no smaller than 8.5" by 11", and all maps must be of the same physical size, scale, and depict the same geographic area. Include major streets and street names on each map. All maps must share a common color scheme.
 2. If the FCC rules for any proposed radio service define a minimum radio frequency signal strength level, that level must be shown on the map in a color easily distinguishable from the base paper or transparency layer, and adequately identified by RF level and map color or gradient in the map legend. If no minimum signal level is defined by the FCC rules you must indicate that in the legend of each RF coverage map. You may show other RF signal level(s) on the map so long as they are adequately identified by objective RF level and map color or gradient in the map legend.
 3. RF coverage maps with labels such as, "In-Building" "In-Car" and "Outdoor" or referencing a link budget without corresponding signal strengths in units of "dBm" will be rejected.
 4. Where the City of Huntington Beach determines that one or more submitted maps are inadequate, it reserves the right to require that one or more supplemental maps with greater or different detail be submitted.
- 4.02: Map of existing RF coverage within the City of Huntington Beach on the same network, if any (if none, so state). This map should not depict any RF signal coverage to be provided by the Project. Designate this map "Attachment 6.02".
- Initial here _____ to indicate that Attachment 6.02 is attached to this application.
- 4.03: Map of RF coverage to be provided only by the Project. This map should not depict any RF coverage provided by any other existing or proposed wireless sites. Designate this map "Attachment 6.03".
- Initial here _____ to indicate that Attachment 6.03 is attached to this application.
- 4.04: Map of RF coverage to be provided by the Project and by other wireless sites on the same network should the Project be approved. Designate this map "Attachment 6.04".

Initial here _____ to indicate that Attachment 6.04 is attached to this application.

<Continue to next page>

5.00: Project Photographs and Photo Simulations

5.01: Where an Applicant proposes to construct or modify a wireless site, the Applicant shall submit pre-project photographs, and photo simulations showing the project after completion of construction, all consistent with the following standards:

1. Minimum size of each photograph and photo simulation must be 8.5" by 11" (portrait or landscape orientation);
2. All elements of the project as proposed by the Applicant must be shown in one or more close-in photo simulations.
3. The overall project as proposed by the Applicant must be shown in five or more area photos and photo simulations. Photos and photo simulation views must, at a minimum, be taken from widely scattered positions separated by an angle of no greater than 72 degrees from any other photo location.
4. For each photograph and photo simulation, show on an area map the location and perspective angle of each photograph and photo simulation in relationship to the Project location.
5. All 'before' and after photos and photo simulations must be of the same scale. For example, do not place a smaller 'before' photo in a box on the same page as a large 'after' photo simulation.

The number of site photos, and photo simulations, and the actual or simulated camera location of these photos and photo simulations are subject to City of Huntington Beach determination. The Applicant must submit photos and photo simulations consistent with these instructions, and be prepared to provide additional photos and photo simulations should they be requested by the City of Huntington Beach.

<Continue to next page>

6.00: **Candidate Sites**

6.01: For applicants in the cellular, PCS, broadcast, ESMR/SMR categories, and others as requested by the City of Huntington Beach, the information requested in Section 8 is required. All others proceed to 9.00.

6.02: Has the Applicant or Owner or anyone working on behalf of the Applicant or Owner secured or attempted to secure any leases or lease-options or similar formal or informal agreements in connection with this project for any sites other than the candidate site identified at 1.01 and 1.02? ☐ Yes ☐ No

6.03: If the answer to 8.02 is NO, proceed to 8.05.

6.04: Provide the physical address of each such other location, and provide an expansive technical explanation as to why each such other site was disfavored over the Project Site. Designate this attachment "Attachment 8.04".

Initial here _____ to indicate that Attachment 8.04 is attached to this application.

6.05: Considering this proposed site, is it the one and only one location within or without the City of Huntington Beach that can possibly meet the objectives of the project?
☐ Yes ☐ No

6.06: If the answer to 8.05 is NO, proceed to 9.00.

6.07: Provide a technically expansive and detailed explanation supported as required by comprehensive radio frequency data fully describing why the proposed site is the one and only one location within or without the City of Huntington Beach that can possibly meet the radio frequency objectives of the project. Explain, in exact and expansive technical detail, all of the objectives of this project. Designate this attachment, "Attachment 8.07".

Initial here _____ to indicate that Attachment 8.07 is attached to this application.

<Continue to next page>

7.00: Identification of Key Persons

7.01: Identify by name, title, company affiliation, work address, telephone number and extension, and email address the key person or persons most knowledgeable regarding:

7.10 (1) The site selection for the proposed project, including alternatives;
7.11 Name: _____
7.12 Title: _____
7.13 Company Affiliation: _____
7.14 Work Address: _____
7.15 Telephone / Ext.: _____
7.16 Email Address: _____

7.20 (2) The radio frequency engineering of the proposed project;
7.21 Name: _____
7.22 Title: _____
7.23 Company Affiliation: _____
7.24 Work Address: _____
7.25 Telephone / Ext.: _____
7.26 Email Address: _____

7.30 (3) Rejection of other candidate sites evaluated, if any;
7.31 Name: _____
7.32 Title: _____
7.33 Company Affiliation: _____
7.34 Work Address: _____
7.35 Telephone / Ext.: _____
7.36 Email Address: _____

7.40 (4) Approval of the selection of the proposed site identified in this project.
7.41 Name: _____
7.42 Title: _____
7.43 Company Affiliation: _____
7.44 Work Address: _____
7.45 Telephone / Ext.: _____
7.46 Email Address: _____

7.5 If more than one person is/was involved in any of the four functions identified in this section, attach a separate sheet providing the same information for each additional person, and identifying which function or functions are/were performed by each additional person. Designate this attachment "Attachment 7.5".

Initial here _____ to indicate that the information above is complete and there is no Attachment 7.5, or initial here _____ to indicate that Attachment 7.5 is attached to this application.

<Continue to next page>

8.00: **Form Certification**

8.01: The undersigned certifies on behalf of itself and the Applicant that the answers provided here are true and complete to the best of the undersigned's knowledge.

Signature

Title

Print Name

Email Address

Print Company Name

Telephone Number/extension

Date Signed

<Stop Here. End of Form>

Council/Agency Meeting Held: <u>3-05-2007</u>	<i>Robin G. Lugar</i> Asst. City Clerk's Signature
Deferred/Continued to: _____ <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: <u>3/5/2007</u>	Department ID Number: <u>2007-03</u>

**Adopted and
effective
immediately*

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

SUBMITTED BY: PAUL EMERY, Deputy City Administrator

JENNIFER McGRATH, City Attorney

PREPARED BY: JENNIFER McGRATH, City Attorney

SUBJECT: MORATORIUM ON THE INSTALLATION OF WIRELESS
TELECOMMUNICATIONS FACILITIES INCLUDING THOSE IN THE
PUBLIC RIGHT-OF-WAY

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Should the City adopt an extension to Interim Ordinance No. 3748 and including interim regulations that will allow providers to apply for permits for wireless communications facilities throughout the City including the public right-of-way?

Funding Source: N/A

Recommended Actions: Motion to approve and adopt Ordinance No. 3766 and adopt specific findings regarding the detriment to the public health, welfare and safety and extending Interim Ordinance No. 3748 for one year.

Alternative Action(s): Do not approve.

Analysis: On August 7, 2006, the City Council adopted Interim Ordinance No. 3748, a 45-day moratorium on the installation of wireless telecommunication facilities in the public right-of-way. On September 18, 2006, this moratorium was extended for six months.

D-1
ATTACHMENT NO. 5.1

Staff now requests adoption of Ordinance No. 3766 which serves to extend Interim Ordinance No. 3748 and provides interim regulations that will permit the City to process permits during the moratorium for wireless facilities that are installed on private and public property and in the public right-of-way.

After notice and a public hearing, Government Code Section 65858 authorizes the City Council to extend a moratorium for ten months and 15 days and subsequently extend the interim ordinance for one year. However, not more than two extensions may be adopted. For this reason, the City Attorney requests a year extension but anticipates that permanent regulations will be considered by the Planning Commission in April and forwarded to City Council immediately thereafter. The regulations to be considered by the Planning Commission will be consistent with the interim regulations included in Ordinance No. 3766

The interim regulations included in Ordinance No. 3766 are consistent with the direction of City Council that the City Attorney review current State and federal law and develop regulations for the placement of wireless communication facilities in the public right-of-way. Among other things, the interim regulations require all facilities installed in the public right-of-way to be undergrounded except for antennas. The interim regulations also include a permitting process to provide consistent regulations regardless of where the facilities are located to encourage and facilitate wireless communications throughout the City, while minimizing visual clutter and encouraging co-location with other facilities.

Environmental Status: There is no possibility that the adoption of this ordinance may have a significant adverse effect on the environment because this ordinance will reduce the possibility of such effects by limiting the range and intensity of new uses possible in the areas that it covers (CEQA Guidelines, Section 15061(b)(3)).

Attachment(s):

City Clerk's Page Number	No.	Description
	1.	Ordinance No. 3766 Amending Zoning & Subdivision Code Section 230.96 Regarding Wireless Communication Facilities
	2.	Report of the City Council dated February 23, 2007

ATTACHMENT NO. 5.2